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No. 2722

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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WILLIAM HANLEY,

Appellant,

VS.

THE PACIFIC LIVESTOCK COMPANY, a Corporation,

Appellee.

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PORTIONS OF  
ORIGINAL TRANSCRIPT OF TESTIMONY

Printed Pursuant to Praecipes of Counsel for Appellee,\* Filed  
January 10 and 13, 1916.

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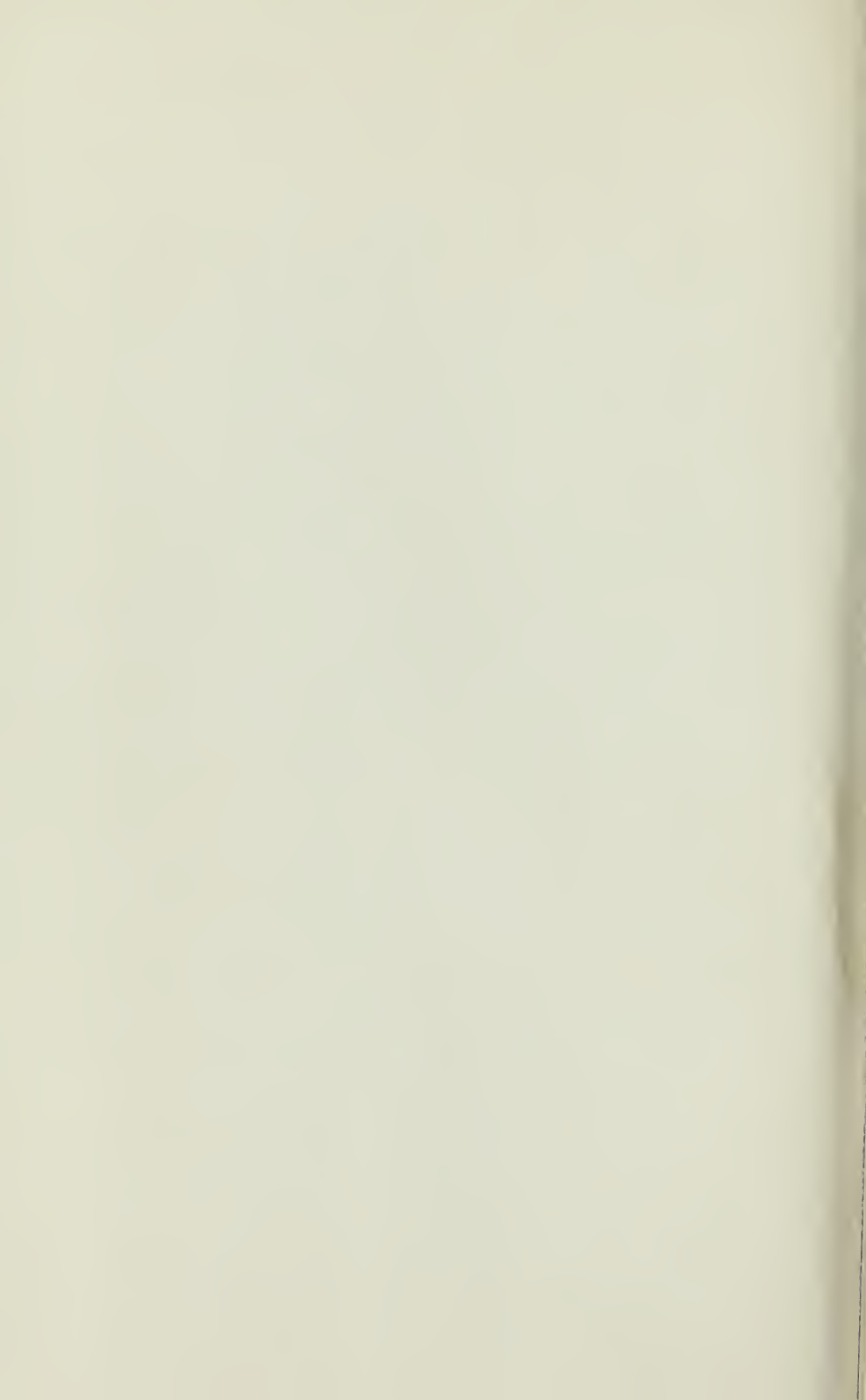
Upon Appeal from the United States District Court for the District  
of Oregon.

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**Filed**

FEB 4 - 1916

**F. D. Monckton,**



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the United States Circuit Court of Appeals for the  
Ninth Circuit.*

No.—

WILLIAM HANLEY,

Appellant,

vs.

PACIFIC LIVESTOCK COMPANY (a Corpora-  
tion),

Appellee.

**Praeipice as to Printing Record.**

To the Clerk of the Above-entitled Court:

Comes now the appellee in the above-entitled suit and in addition to the portion of the record already printed requests that the following portions of the transcript of the testimony be printed, to wit:

From line 1, page 1, to line 12, page 9, both inclusive; line 10, page 15, to line 21, page 15, both inclusive; line 1, page 16, to line 29, page 18, both inclusive; line 17, page 20, to line 20, page 22, both inclusive; line 18, page 24, to line 23, page 25, both inclusive; line 9, page 33, to line 25, page 34, both inclusive; line 25, page 36, to line 14, page 42, both inclusive; line 24, page 48, to line 29, page 49, both inclusive; line 24, page 58, to line 20, page 59, both inclusive; line 24, page 67, to line 10, page 68, both inclusive; line 7, page 81, to line 9, page 83, both inclusive; line 21, page 83, to line 6, page 85, both inclusive; line 20, page 88, to line 23, page 93, both inclusive; line 2, page 94, to line 5, page 96, both inclusive; line 1, page 97, to line 28, page 97, both

inclusive; line 5, page 103, to line 23, page 104, both inclusive; line 23, page 112, to line 2, page 113, both inclusive; line 16, page 118, to line 23, page 120, both inclusive; line 12, page 124, to line 2, page 125 both inclusive; line 7, page 133, to bottom of page 136; line 9, page 137, to bottom page 137; line 20, page 146, to line 19, page 153, both inclusive; line 15, page 168, to line 9, page 169, both inclusive; line 6, page 196, to line 3, page 199, both inclusive; line 22, page 199, to line 20, page 200, both inclusive; line 3, page 210, to line 18, page 210, both inclusive; line 1, page 215, to line 27, page 217, both inclusive; line 7, page 230, to bottom page 231; line 2, page 247, to bottom page 247; line 28, page 252, to line 14, page 254, both inclusive; line 25, page 255, to line 6, page 256, both inclusive; line 16, page 257, to line 6, page 258, both inclusive; line 1, page 283, to line 7, page 285, both inclusive; line 27, page 285 to line 11, page 286, both inclusive; line 17, page 286, to line 16, page 300, both inclusive; line 23, page 301, to line 12, page 305, both inclusive; line 15, page 306, to bottom page 307; all of the testimony of Hull Hotchkiss which appears on pages 311 to 323, both inclusive; line 1, page 324, to line 4, page 332, both inclusive; line 13, page 332, to line 21, page 332, both inclusive; line 4, page 333, to bottom of page 334; all of the testimony of James Dalton which appears on page 335 to 341, both inclusive; all of the testimony of Robert Hudspeth which appears on pages 342 to 349, both inclusive; line 1, page 354, to line 8, page 356, both inclusive; line 5, page 358, to line 8, page 360, both inclusive; and line 1, page 363, to line 27, page 364, both inclusive.

The said portions of said record should be printed at the expense of the appellant but if the appellant will not pay for the same the expense thereof will be paid by appellee.

WIRT MINOR,  
EDMUND F. TREADWELL,  
Solicitors for Appellee.

Received a copy of the within this praecipe 6th day of Jany., 1916.

WOOD, MONTAGUE & HUNT,  
By C. E. S. WOOD,  
Attorney for Wm. Hanley.

Our printed record has gone down to Ct. Appeals.  
C. E. S. WOOD.

[Endorsed]: No. 2722. In the United States Circuit Court of Appeals, for the Ninth Circuit. William Hanley, Appellant, vs. Pacific Livestock Company (a Corporation), Appellee. Praecipe as to printing record. Filed Jan. 10, 1916. F. D. Monckton, Clerk.

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*In the United States Circuit Court of Appeals for the  
Ninth Circuit.*

No.—

WILLIAM HANLEY,

Appellant,

vs.

PACIFIC LIVESTOCK COMPANY (a Corporation),

Appellee.

**Supplemental Praecept as to Printing Record.**

To the Clerk of the Above-entitled Court:

Comes now the appellee in the above-entitled suit and in addition to the portion of the record already printed requests that the following portions of the transcript of the testimony be printed, to wit:

Testimony of W. A. GRIFFING from line 1, page 1, to line 12, page 9, both inclusive; line 10, page 15, to line 21, page 15, both inclusive; line 1, page 16, to line 29, page 18, both inclusive; line 17, page 20, to line 20, page 22, both inclusive; line 18, page 24, to line 23, page 25, both inclusive; line 9, page 33, to line 25, page 34, both inclusive; line 25, page 36, to line 14, page 42, both inclusive; line 24, page 48, to line 29, page 49, both inclusive; line 24, page 58 to line 20, page 59, both inclusive; line 24, page 67, to line 10, page 68, both inclusive.

Testimony of EDWARD F. TREADWELL from line 7, page 81, to line 9, page 83, both inclusive; line 21, page 83, to line 6, page 85, both inclusive; line 20, page 88, to line 23, page 93, both inclusive; line 2, page 94, to line 5, page 96, both inclusive.

Testimony of JOHN GILCREST from line 1, page 97, to line 28, page 97, both inclusive; line 5, page 103, to line 23, page 104, both inclusive; line 23, to page 112, to line 2, page 113, both inclusive; line 16, page 118, to line 23, page 120, both inclusive.

Testimony of BEN NEWMAN from line 12, page 124, to line 2, page 125, both inclusive; line 7, page 133, to bottom of page 136; line 9, page 137, to bottom page 137.



Testimony of WILLIAM D. HANLEY line 20, page 146, to line 19, page 153, both inclusive; line 15, page 168, to line 9, page 169, both inclusive; line 6, page 196, to line 3, page 199, both inclusive; line 22, page 199, to line 20, page 200, both inclusive; line 3, page 210, to line 18, page 210, both inclusive; line 1, page 215, to line 27, page 217, both inclusive; line 7, page 230, to bottom page 231.

Testimony of GEORGE McLAREN, line 2, page 247, to bottom page 247.

Testimony of JOHN RYAN, line 28, page 252, to line 14, page 254, both inclusive; line 25, page 255, to line 6, page 256, both inclusive; line 16, page 257, to line 6, page 258, both inclusive.

Testimony of GEORGE W. YOUNG, line 1, page 283, to line 7, page 285, both inclusive; line 27, page 285, to line 11, page 286, both inclusive; line 17, page 286, to line 16, page 300, both inclusive; line 23, page 301, to line 12, page 305, both inclusive; line 15, page 306, to bottom page 307; all of the testimony of HULL HOTCHKISS which appears on pages 311 to 323, both inclusive.

Testimony of CAREY THORNBURG, line 1, page 324, to line 4, page 332, both inclusive; line 13, page 332, to line 21, page 332, both inclusive; line 4, page 333, to bottom of page 334; all of the testimony of JAMES DALTON which appears on page 335 to 341, both inclusive; all of the testimony of ROBERT HUDSPETH which appears on pages 342 to 349.

Testimony of HENRY LUIG, line 1, page 354, to line 8, page 356, both inclusive; line 5, page 358, to line 8, page 360, both inclusive.

Testimony of JOHN RYAN, when recalled, line 1, page 363, to line 27, page 364, both inclusive.

The said portions of said record should be printed at the expense of the appellant, but if the appellant will not pay for the same the expense thereof will be paid by the appellee.

WIRT MINOR,  
EDWARD F. TREADWELL,  
Solicitors for Appellee,

[Endorsed]: No. 2722. In the United States Circuit Court of Appeals, for the Ninth Circuit. William Hanley, Appellant, vs. Pacific Livestock Company (a Corporation), Appellee. Supplemental Praecipe as to Printing Record. Filed Jan. 13, 1916. F. D. Monckton, Clerk.

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**[Testimony of W. A. Griffing—Direct Examination (Portions of).]**

Portland, Oregon, Saturday, May 8, 1915, 9:30 A. M.  
Saturday, May 8, 1915, 9:30 A. M.  
Portland, Oregon,

W. A. GRIFFING, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows.

Direct Examination.

(Questions by Mr. TREADWELL.)

Now, Mr. Griffing, you are a civil engineer, are you?     A. Yes.

Q. In the employ of the Pacific Livestock Company?     A. Yes.

Q. During the months of March and April, and up



(Testimony of W. A. Griffing.)

to the present time, have you been employed in Harney Valley?      A. Yes.

Q. Your work was, there, for the purpose of gathering information, I understand, in connection with the adjudication of the water rights primarily, was it not?      A. Yes.

Q. That is what you went there for?

A. Yes, on Silvies River.

Q. During that time, you have taken measurements of the water of the river, have you?

A. Yes.

Q. Would you state, Mr. Griffing, during the months of March and April, what was the highest and lowest flow of the river during that time?

A. The highest flow was 650 second-feet, cubic feet per second. And the lowest flow was in April, or was up in May, rather.

Q. Never mind the exact date.

A. It was 130 second-feet.

COURT.—That was in May? [1\*]

A. Along the first part of May, yes, or the last part of April.

Q. What was about the average flow during that period then?

A. It would be about 428 second-feet.

Mr. WEBSTER.—I don't understand that.

A. About 428 cubic feet per second.

Q. Now, Mr. Griffing, have you seen the Government measurements of the flow of the river during the years 1914 and 1913?

A. Yes, I have a copy of that.

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\*Page-number appearing at foot of page of original certified Record.

(Testimony of W. A. Griffing.)

Q. About what did that show as the flow of the river, during the months of March and April of those years?

Mr. WOOD.—That is strictly not competent.

COURT.—What years was that?

Mr. TREADWELL.—1913 and 1914.

Mr. WOOD.—I don't care about it, if he is very certain of his accuracy.

Q. You have blue-print copies of them?

A. Yes, I got the blue-print copies from the Government.

Q. What was it?

A. I haven't made an average of it, but their highest flow was 1770 cubic feet, ranging from that down to about 300 second-feet.

Q. Now, I call your attention to the dam known as the Luig dam. You know the location of that, do you? A. Yes.

Mr. WOOD.—If you have no objection, let him give the location right into the record.

Q. Will you give the location of that, Mr. Griffing.

A. That is in the southwest quarter of section 31, township 23-31.

Q. It is above the Luig lands, is it? [2]

A. It is above the Luig lands, yes.

Q. Did you make observation of that dam, and if so, when? A. On the 24th of April.

Q. And what condition did you find it in at that time?

A. The boards were all in, and no water going through the dam, but a little around it, about four

(Testimony of W. A. Griffing.)

second-feet going around the dam.

Q. About how much water was there in the river at the dam, and being diverted by it?

A. 48 second-feet.

Q. 48? A. Yes.

Q. So that all the water of that west fork of the river, was diverted by that dam, with the exception of about four feet that went around the dam, and then went down the stream? A. Yes.

COURT.—How much was that in the dam?

A. 48 second-feet above the dam.

COURT.—Made 52 second-feet in the river at that time?

A. Yes, about.

Q. Now, you are sure that was 52, or was it 42, Mr. Griffing? I don't think I want to take the time to consult the notes, but unless you are sure—

A. Well, that should have been, there was about 46 second-feet. It should be 42 second-feet, being diverted by the dam, and about 46 second-feet in the river above.

Q. I don't know that it is material, but I just want to keep the record straight. I think that is what you gave me. A. Yes, that is correct.

Q. Where was that water that was being diverted by this dam going, with reference to the Luig property in section 6?

A. It was going on section 6, flowing all over it.

[3]

COURT.—The water that was being diverted by the dam?

(Testimony of W. A. Griffing.)

A. The water that was being diverted by the dam, yes.

Q. Now, Mr. Luig's house is on that section, is it not? A. Yes.

Q. Did you make an observation of the dam that we refer to, as the Young dam, on the 24th and 25th of April? A. Yes.

Q. Where is the dam located that you refer to?

A. That is the southeast quarter of section 19.

Q. And with reference to the north line of section 30, where is it located?

A. Just north of the north line.

Q. So it is just across the line of the Young property?

A. Just across the line of the Young property, yes.

Q. Did you find this old ditch, that is on this map that takes out on the west side of the river, and goes westerly along the road that is referred to through the Young and Hotckhiss property? A. Yes.

Q. Did you find a new ditch that had been dug from the new dam and cut down into that old ditch?

A. Yes.

Q. Was there any water going from the river directly into the old ditch? A. No.

Q. Was the water going from the river above the dam in the new ditch into the old ditch? A. Yes.

Q. The way the water was flowing, could water flow from the river into the old ditch?

A. No, it could not.

Q. Was the old ditch shut off by a headgate?

A. Yes, it was shut off by a headgate.

(Testimony of W. A. Griffing.)

Q. How high was the water in the new ditch and in the old ditch below where the new ditch came into it, above the water flowing [4] in the river at that time? A. More than 1.8 feet.

Q. As I understand you, Mr. Griffing, the water could not naturally flow into the old ditch at that time? A. No, it could not.

Q. Now, what was the condition of the Young dam at that time?

A. Why, there were flash-boards in the bottom.

COURT.—What kind of boards?

A. Flash-boards, or stop-boards, the water being raised up about a foot higher, or about 1.8 feet above the dam than it was below the dam.

Q. You took the elevation above the dam and below the dam? A. Yes.

Q. And there was substantially that difference in the elevation? A. Yes.

Q. Now, about how far below that do you understand is the location of the old Young dam?

A. About 1,000 feet, I should judge.

Q. Do you know what the fall of the country is in there?

A. It is very close to three feet in a mile there.

Q. Now, where did this water go that was diverted to the west at that time?

A. It went into the ditch, to the old ditch, and then along the county road, passing from one side to the other of the county road in the ditches there, under bridges, and then into the fields of Hotchkiss.

(Testimony of W. A. Griffing.)

Mr. WOOD.—Can't you describe those fields in the record?

A. The Hotchkiss field would be the northwest quarter of section 30, and the Voegtly field would be the southwest quarter of section 30. [5]

Q. Now, those ditches along each side of that county road, about how wide was the surface of the water in those ditches?

A. From 12 to 16 feet wide.

Q. And extending for about what distance from the river westerly? A. About half a mile.

Q. So that the water stood in a ditch on each side of the road, as I understand it, that width you have given, and for half a mile long? A. Yes.

Q. And did that ditch go part way through Mr. Young's land too? A. Yes.

Q. Was Mr. Young right there? Does his house stand right aside of that dam?

A. Very close to it, yes.

Q. Was he actually there present at one of the times you made these examinations? A. No.

Q. Well, I say at one time you were there, was Mr. Young there? A. No, not George Young.

Q. Well, maybe you don't know George Young?  
Mr. WOOD.—Here he is.

Q. What Mr. Young was it that was there?

A. No.

Q. It was another Young?

A. Another Young, yes.

Q. Now, do you know the location of an old skeleton of a dam known as the Voegtly dam?



(Testimony of W. A. Griffing.)

A. Yes.

Q. Where is that located, Mr. Griffing?

A. That should be in the southwest quarter of section 30.

Q. Same township?

A. Same township and range.

COURT.—Is it marked on the map? [6]

A. Yes.

Q. That is an old wooden structure, is it?

A. Yes.

Q. And what is the total width of that old structure, Mr. Griffing? A. 28 feet.

Q. And what was the total width of the openings in it? A. I believe it was 24.4 feet.

Mr. WOOD.—He can refer to his memorandum.

Q. Refer to your memorandum. You gave me 23½.

A. I will refer to my memorandum. 23½ feet.

Q. That was the openings in the clear?

A. The openings in the clear—clear opening, yes.

Q. What condition did you find that dam in as to having any boards in it?

A. The boards were in; that is, they were in perpendicular, up and down.

Q. Put in perpendicularly across the river?

A. Ends down across the river, yes.

Q. Did you also find a new dam that had been constructed shortly above that?

A. Yes, just close above that.

Q. Will you tell the Court how that had been constructed?

(Testimony of W. A. Griffing.)

A. Been constructed of wood with the wings being filled with broken stone. The upstream side the wings were running diagonally toward the bank, which was at least 14 feet from the edge of the opening.

Q. Well, now, how wide was the wooden portion of this new dam? A. 16.4 feet.

Q. As against 28 feet of the old dam? A. Yes.

Q. How wide were the openings, total width of the openings? A. 12.3 feet,

Q. As against  $23\frac{1}{2}$  in the old? A. Yes. [7]

Q. The balance of the dam is constructed, as I understand you, by a rock formation.

A. By a rock formation, broken rock dam.

Q. Did it have the appearance of being newly constructed? This dam? A. Recently; yes, very.

Q. Now, when you made this examination in April of this year, how high were those two dams, approximately, raising the water in the channel?

A. About a foot.

COURT.—What two dams are you speaking of?

Mr. TREADWELL.—That is the old Voegtly dam, with the boards perpendicular, and the new dam that had been put in. That is correct, is it?

A. Yes.

Q. Did you also make an examination of the ditch known as the People's Ditch? A. Yes.

Q. Where is that located?

A. That takes out of the river in the northwest quarter of section 31.

Q. What was the condition of the head of that



(Testimony of W. A. Griffing.)

ditch? A. It was open. The gate was open.

Q. Diverting water of the river? A. Yes.

Q. When was this?

A. On the 15th of April, on the 24th and 25th, 26th.

Q. You saw it on the 15th of April, now?

A. Yes.

Q. And the 25th of April? A. Yes.

Q. And the 25th of April? A. Yes.

Q. About how much water was it diverting?

A. 4.3 second-feet. [8]

Q. Calling your attention now to the other side of the country and the east fork.

COURT.—Who are the owners of the People's Ditch?

Mr. TREADWELL.—Mr. Dalton and Maria Kelly, who is not cited here (being a lady, I didn't cite her), and Robert Hudspeth.

Q. Withdrawing that just a moment. At the time that you went down there, on the last time you went there, on Sunday, and saw the People's Ditch open and carrying that water, did you pass Mr. Robert Hudspeth coming to town? A. Yes.

Q. On a load of hay? A. On a load of hay, yes.

Q. To do that, he would have to cross that ditch, would he not? A. Yes. [9]

\* \* \* \* \*

Q. Will you produce them, Mr. Griffing. I will first ask you to produce your photograph of the Luig dam.

Mr. TREADWELL.—Witness here produces a photograph which has been numbered "1," and it

(Testimony of W. A. Griffing.)

says "Below Luig dam, Silvies River, looking upstream."

Q. That shows the dam when it was closed, in the condition you found it at the time you have stated in your testimony, does it?     A. Yes.

Mr. WOOD.—We have no objection, if he took them, and identifies them.

COURT.—Very well.

Q. I will ask you to produce No. 2, the picture of the Young dam.   [15]

\*       \*       \*       \*       \*       \*       \*       \*

Q. By the Young dam, in that question, I mean the dam that you have referred to, immediately above the Young property.     A. Yes, sir, in section 19.

Q. Does this show the fall over the dam, as you have testified to it, at the time you saw it?

A. Yes, partially.

Q. It shows part of the fall of the water?

A. Yes, it shows the direct fall of the water from the flash-boards.

Q. Did you also take a picture of the Young old and new ditch?     A. Yes.

Mr. TREADWELL.—Witness here produces photo No. 3, "Ditch from Young dam. Small cut to left, takes out above dam. Original ditch takes out below."

Q. I will ask you if the old ditch is the one that shows the water surface.

A. Yes, that is the old ditch.

Q. Is the structure at the end, the headgate that holds the water from running back to the river?

(Testimony of W. A. Griffing.)

A. Yes, holds the water from running back in the river.

Q. Is this ditch the cut above the new dam?

A. Yes.

Q. If this headgate was taken out, if that stop-gate was taken out of the old ditch, would the water run back to the river, rather than run into the ditch?

A. Run back into the river.

Q. Couldn't possibly run from the river into the ditch? A. No, it could not.

COURT.—Do you know how recently that ditch was constructed? A. No, I don't.

Mr. TREADWELL.—They state, I think, a year or two ago, a [16] couple of years ago. I don't remember.

Q. I will ask you now to produce the picture that you took of the old Voegtly dam. (Witness does so.) Does this picture numbered "4" show the actual condition of the Voegtly dam, and the boards in it, at the time that you have testified? A. Yes.

Q. That is taken from above the dam, is it?

A. That is taken from above the dam, looking downstream, yes.

COURT.—What boards do you have reference to there?

A. These perpendicular boards, and there are also short ones in there.

COURT.—Is that the way they have of obstructing the waters, putting boards in perpendicularly that way?

A. That is not the general rule, but that is the way they were in there.

(Testimony of W. A. Griffing.)

COURT.—These boards were put in to hold the brush, were they?

A. They were put in to hold the water. Then there was thrown straw in front of them.

Q. Is there a cross-board across the front also?

A. Yes, there are cross-boards going in front of it.

Q. Now, have you got a picture of that same dam from below?

A. From below, showing both the old dam and the new dam.

Mr. TREADWELL.—This being No. 5, which the witness produces.

Q. That shows both the old dam and the new one, that has been referred to, does it, above? A. Yes.

COURT.—The new dam is above?

A. The new dam is above the old dam.

COURT.—This is the old dam?

A. That is the old dam. [17]

Q. Have you also a picture of the new dam, Voegtly new dam, immediately above this one?

A. The Voegtly new dam, yes.

Q. This is taken from above? A. Yes.

Q. Shows both the wooden part of the structure and the rock fill?

A. That is taken from below there. (Referring to No. 6.)

Q. But it does show both?

A. It shows the wooden structure and the rock fill, yes.

COURT.—This is what dam, now?

A. That is the new Voegtly dam, just above the old one.

(Testimony of W. A. Griffing.)

Mr. TREADWELL.—This is the rock portion, this is the wooden opening.

COURT.—What keeps the water from running through the rock? Earth thrown in above it?

A. Earth thrown in above it.

Q. Have you also the picture of the People's ditch headgate, at the time you saw it diverting water?

A. Yes. (Witness here produces Photo No. 7.)

Q. Does that show the water that was flowing away from the river, and through that People's ditch at the time you mention?

A. Yes, that shows the water at that time.

COURT.—How did that water get through the ditch? Was the headgate raised?

A. The headgate was raised. The lower board, six-inch board, that fits in the bottom, that was nailed on to fish screen, was raised. It shows the fish screen up, on top of the headgate there.

Q. I will ask you if that ditch is regulated by underflow waters, and overflow?

A. It was regulated by an underflow at that time.

[18]

\* \* \* \* \*

Q. You have two more pictures of that, have you not, Mr. Griffing?

A. I have two more pictures showing it on the 4th day of May, in the morning.

Q. I will take that up before I go any further. Subsequent to the time, that you have testified, did you make a further examination of the Hanley "21" dam? A. Yes.

(Testimony of W. A. Griffing.)

Q. At what time?

A. On the morning of May 4th.

Q. What time in the morning, about, were you there?     A. Between 10 and 11 o'clock.

Q. What condition did you find the Hanley dam in at that time?

A. I found all the boards in, and no water passing through at all.

Q. Where was the water being diverted?   [20]

A. Diverted on to section 21, and around—it was diverted—ditches on both sides of the river, flowing on to 21, and on to 22, as well.

Q. Did you take a picture which you here produce, No. 11, which shows the boards in that dam, as you have testified?

A. Yes, I took that from downstream, looking upstream into the headgate.

Q. It was stopping all of the water in the river at that time?

A. All of the water in the river at that time.

Q. Did you also take a picture of it from above, showing that the boards were up higher than the water in the river?

A. Yes, I took as far as I could get. I had to lean out over the water. I couldn't get all of it. I got three openings, and all the openings were in the same condition.

Mr. TREADWELL.—That is No. 12.

Q. That was taken likewise on the 4th day of May?

A. That was taken on the 4th day of May, in the morning.



(Testimony of W. A. Griffing.)

Q. Did you also, at that time, take a picture showing the water, flowing out by means of that dam on to the west side of the river, on to section 21?

A. Yes, section 21.

Q. Will you produce that—No. 13? (Witness does so.) That is the water that was being forced out of the river by that dam on to that land, is it?

A. On the west side of the river, yes.

COURT.—This doesn't show the dam.

A. No, that is looking south from the dam over section 21.

COURT.—This doesn't show the opening.

A. No, it shows the water going on to the field, the field being flooded.

Q. Did you also take a picture showing the water that was forced [21] out on that date, on the east side of the river? A. Yes.

Q. Will you produce that? (Witness produces No. 14.) Where was that water forced to?

A. That was forced out in the Hanley ditch—north ditch—what they call the North 21 ditch.

Q. It is what is called the Hanley upper ditch?

A. It is what is called the Hanley upper ditch; on the east side going around his headgate into his ditch, and over onto section 22, and his other lands.

Q. Was the headgate in that ditch open or closed?

A. The headgate in that ditch was closed.

Q. How was water forced into it?

A. The level of the water being raised higher than the adjoining land—

Q. This picture, as I understand it, shows the

(Testimony of W. A. Griffing.)

water flowing directly from the river through what?

A. That is coming up and going around the dam, and then directly into the ditch, just below the headgate in the ditch.

Q. Above this dam of course?      A. Yes. [22]

\*       \*       \*       \*       \*       \*       \*       \*

Q. There was some statement in here, Mr. Griffing about a new bridge that has been constructed by Mr. Hanley. Is there such a bridge, and where is it located?

A. Yes, there is a bridge located in Section 27, below the Hanley drain ditch.

Q. How is that constructed, with reference to the bank of the river?

COURT.—How far below the drain ditch?

A. I should judge about a quarter of a mile.

COURT.—Right on the intermediate line of the section?

A. No. I couldn't say, but it is about a quarter of a mile below.

Q. How is that bridge constructed, with reference to the bank of the river?

A. The stringers are below the banks of the river. When the water [24] is high it raises the boards of the bridge up—raises them up. Makes them float.

Q. Have you a picture of that?

A. I have a picture of that, yes.

Mr. TREADWELL.—Witness here produces Photograph No. 16.

Q. Does that show the stringers?

A. No, you cannot see the stringers from that.



(Testimony of W. A. Griffing.)

They are below the surface of the water.

Q. You cannot even see the ends of them on the bank?

A. No. They were completely submerged then at that time.

Q. Do you know how deep those stringers are?

A. No, I do not.

Q. You didn't measure them?

Mr. WEBSTER.—Does that show when that observation was taken?

Q. About when was that observation taken, Mr. Griffing, if you know?

A. That was on the 20th of April.

Q. Did you take a picture immediately above that, to show the effect of that in making the river overflow? A. Yes.

Witness here produces Photo No. 17.

Q. Does that photo that you have just produced, show the effect of that bridge?

A. That shows the effect of the bridge immediately above. [25]

\* \* \* \* \*

Q. Possibly you have referred to the cattle proposition. Have you, or not?

A. Oh, no, I have not. I found several dead cattle at different times. Yes, at one time I found about 12 or 14 boards, five or six feet long, all wired and nailed together, just above the old bridge, the skeleton of the old bridge, and a quantity of tules and a dead cow up against it. I pulled that out.

(Testimony of W. A. Griffing.)

Mr. WOOD.—Is that the one you have a photograph of here?

A. No, I haven't any photograph of that. .

Q. Now, then, Mr. Griffing, is it a fact, then from the examination that you have made, that these various structures that you have testified to, diverted all of the water of the west fork of the river, with the exception of about four feet that went around the Luig dam, and all of the water of the east fork of the river, with the exception of the water that was taken by the Pacific Livestock Company through the Orphan ditch?

A. Yes.

COURT.—Do I understand that up to the first of May, the Pacific Livestock Company had a right to have that water, all of it come down over its land?

Mr. TREADWELL.—Except such as naturally overflowed the general banks of the river, which, of course, could not be controlled, [33] and such as naturally would flow out of the 21 ditch, if there was no obstruction in the river whatever.

Mr. WEBSTER.—Well, that does not quite—

Mr. TREADWELL.—Maybe I omitted something.

Mr. WEBSTER.—Except as to the Hanley drain ditch. If that is left out of the controversy, that is a statement of the case; but this with reference to the drain ditch is quite another matter.

Mr. TREADWELL.—Well, we will attend to the

drain ditch. I think that covers everything, Mr. Griffing.

**[Testimony of W. A. Griffing—Cross-examination  
(Portions of).]**

**Cross-examination.**

(Questions by Mr. WEBSTER.)

You speak about taking out all of the water of the river, the east fork there, except what the company gets out through the Orphan headgate ditch. You say that takes it all out?

A. What is left in the river after it passes the Orphan headgate was diverted by the dam in section 3.

Q. Yes. You don't mean to say that there wasn't water flowing on past the Orphan headgate though?

A. Yes, there was water flowing on past the Orphan headgate.

Q. That water was taken up, or such of it as was taken up, was taken up by the dam in section 3, down there on the Fennimore property. Is that right? A. Yes. [34]

\* \* \* \* \*

Q. On the last testimony you gave, you spoke of some 12 of 14 boards that were nailed together, just above the old bridge. When did you see that?

A. That was along the first part of April. The exact date of it, I do not know.

Q. What old bridge do you mean? [36]

A. That is the skeleton of the old bridge in section 27.

(Testimony of W. A. Griffing.)

Q. Well, let us get these bridges fixed. Now, there is a bridge across the river up by Mr. Hanley's barn, isn't there?

A. That is not the bridge. It is the old bridge just below the—

A. I am getting these bridges located. There is such a bridge there? A. Yes.

Q. You don't make any complaint about that, I believe? No.

Q. Then following down the river, you say there is one where the stringers set down in the water?

A. Yes.

Q. That is in 27? A. That is in 27.

Q. That is the next one down the river, below the bridge at the barn, isn't it?

A. No. Nelson has a bridge in there before you get to that.

Q. Nelson. Well, that is not our bridge?

A. No.

Q. You are not charging that up against us, are you? A. No.

Q. So we will leave that out. Then we come to this one where you say the stringers are down in the water. A. Yes.

Q. Then comes the old skeleton? A. Yes.

Q. Away down toward the corner of 27, that is, isn't it?

A. Yes, the lower part of 27.

Q. What does that old skeleton consist of?

A. Old stringers.

Q. How many?

(Testimony of W. A. Griffing.)

A. I never counted them, but I should say at least six.

Q. Are they down in the water?

A. A portion of them.

Q. What portion of them? What do you mean? Some of the stringers, or a portion of some of them, or portions of all of them? [37]

A. Some of the stringers are rotted or broken. I didn't get under the river to examine them.

Q. Fallen down in the water?

A. Fallen down in the water, yes.

Q. That is all of that that is in the water?

A. Yes. No, there is some of those that go clear across that is down in the water also.

Q. How deep are they in the water?

A. They are partially submerged. I didn't see how deep down they were in the water.

Q. That river has very little current, hasn't it?

A. It has very little current.

Q. The river has tules growing along each side of the river? A. Along the bank.

Q. In the river too, aren't they?

A. No, not right in the center. At least, you can't see them now.

Q. Well, now, was it there, you say you found 12 or 14 boards nailed together? A. Yes.

Q. When did you find that?

A. The first part of April some time. The exact date I do not remember.

Q. How were these boards nailed together? Describe that.

(Testimony of W. A. Griffing.)

A. Wire was nailed on to the boards, then the wire would be nailed to the different boards. There would be several of them nailed together, and then wired together, the wire nailed on to the boards.

Q. How was that against you? Was that in the river?

A. That was in the river.

Q. How many boards were there?

A. I didn't count them exactly.

Q. Well, five or six, or two or three? [38]

A. There were at least 12 or 14 altogether, four or five of them in a bunch nailed together; that is, not nailed solidly together—wired together.

Q. What was it like? What kind of structure had it apparently been? Could you tell anything about that?

A. Oh, it might have been a piece of an old fence.

Q. Were they like pickets—the boards you speak of—or how wide or big were they?

A. About six inches wide.

Q. What? A. About six-inch boards, I believe.

COURT.—An inch thick? A. Yes.

Q. Was it put in place against these stringers, or had it drifted down?

A. It had evidently drifted down. It was not against the stringers. It was beneath the stringers.

Q. It was lodged in the river?

A. It was lodged in the river against the tules that are growing on each bank of the river.

Q. Did that produce such an obstruction as you could measure the water that was diverted?



(Testimony of W. A. Griffing.)

A. No, I couldn't measure it at all, because there were too many places.

Q. Too many places. Well, all that water was the water going out and going right down into the Orphan headgate ditch wasn't it?

A. That is the water, yes, a portion of it; some of it was on both sides of the river.

Q. There was some over on the other side of the river, you say? A. Yes. [39]

Q. But all the diversion, practically all the diversion you have told about here was on the west side of the river, wasn't it?

A. All the water that was being diverted onto the west side of the river would have gotten into the Orphan headgate ditch.

Q. And right on the company's property?

A. Yes.

Q. When was it you saw these dead cattle?

A. That was along the first and middle—mostly the first part of April. The exact dates I don't know.

Q. Where were they?

A. They were lodged in different places in the stream, in the current of the river.

Q. Beginning down—where was the first one down below?

A. The first one was tangled up—was just above the new bridge, that you speak of in section 27, below the drain ditch.

Q. The one we speak of where you say the string-

(Testimony of W. A. Griffing.)

ers were down in the water—is that the one you mean?

A. That is the one, yes. The first one was there.

Q. There was a dead cow in there?

A. It was either a dead cow or a dead hog.

Q. Well, now, think about it. Which was it?

You know a cow from a hog.

A. It was one or the other. I don't remember exactly which.

Q. You wouldn't say now which, whether it was a cow or a hog. All right. It was there on the 27th of April? A. No.

Q. Oh, I beg your pardon—about the first of April?

A. That was along during the first part of April.

Q. Where was another one?

A. Below that there was a dead cow, and it was tangled up in this bunch of boards that were wired together, and tules. [40]

Q. Right in there, near where these stringers go across that you speak of? A. Yes.

Q. Down toward the lower edge of 27?

A. Yes, in section 27.

Q. Well, down toward the Orphan headgate? Down toward the line of 27 and 34?

A. Yes, toward that way.

Q. How many cows were there in there?

A. One.

Q. Well, now, where were there any more?

A. There was another one lodged against the old stringers.



(Testimony of W. A. Griffing.)

Q. Just farther down?

A. Just farther down, yes.

Q. That was along the early part of April?

A. That was along the early part of April, yes, sir.

Q. Where was another one?

A. There was another one just above the Orphan headgate. There is a log across the river there.

Q. Just above the Orphan headgate?

A. Yes.

Q. Is that in 27 or 34?

A. It is very close to the corner.

Q. Isn't it, as a matter of fact, in your own section? A. No, it was not in our own section.

Q. Wasn't it? A. No.

Q. Across there in Hanley's section?

A. It was in Hanley's section, yes.

Q. Well, where was there any more?

A. That is all I followed up.

Q. Well, that is all you saw?

A. That is all I saw.

Q. It is all there was, wasn't it?

A. I don't know. There may have been some in the bottom I didn't see.

Q. If there were any more, you didn't see them?  
[41]

A. If there were any more, I didn't see them.

COURT.—Do you intend to intimate that some one put those dead cows and hogs in the river?

A. I don't know how they got in there.

COURT.—Or they got in there by accident? You don't know how they got in there?

(Testimony of W. A. Griffing.)

A. I don't know how they got in there, no.

COURT.—You don't know who is responsible for them being in there, if anybody?     A. No.

COURT.—That would be the same as to those boards that were wired together, that you speak of?

A. Yes, that would be the same as to those boards that were wired together.     [42]

\*           \*           \*           \*           \*           \*           \*

Q. The river at the point where the Orphan head-gate is, describes—well, not exactly a circle—but runs around from 27, or perhaps from 35, runs around into 34, and back into 35, doesn't it? Loops around there?     A. It makes a loop there.

Q. Hanley owns 35, the company owns 34?

A. Yes.

Q. It makes a loop across from 35 into 34, and then runs back     [48]     in 35 again, doesn't it?

A. Yes, that is right.

Q. Now, did you notice a cut that had been made at one time across that loop, joining the river above and below on 34? Did you notice that?     A. Yes.

Q. You noticed where it left the river in 35 and where it came back to it again in 35, a short distance there, didn't you?

A. I don't know the location of each end of it, but I noticed the cut, yes.

Q. You noticed where the end would connect with the river, didn't you?     A. Yes.

Q. Now, taking that river from the place where the cut leaves above, to where it comes back below, I want to ask you whether there is practically any

(Testimony of W. A. Griffing.)

fall to the river at all there?      A. I don't know.

Q. All right, sir.

COURT.—There must be some fall to get the water off.

Mr. WEBSTER.—Well, there is a condition there in that country—not only there but otherwheres, that the drifting of the water depends upon getting it started in one direction. You can run it one way, and then throw it back and run the other. It seems running both ways. That is a fact.

COURT.—It is very near level then, so that you can control the water?

Mr. WEBSTER.—It is almost level. In fact when that cut was made there to take that water out of the river, when it would run into the river, it ran right back up the river, and out the Orphan head-gate, and he had to put another dam in the river. That was what caused the contempt proceeding against Hanley. [49]

\*            \*            \*            \*            \*            \*            \*

Q. Did you make any observations, or do any work, up in Silvies Valley?

A. Not this year, no.

Q. Not this year?      A. No.

Q. Did you formerly?      A. Yes.

Q. When?      A. Last year. [58]

Q. Have you been up there this year?      A. No.

Q. Do you know what amount of water is being diverted up there?      A. This year?

Q. Yes.

(Testimony of W. A. Griffing.)

A. I have made no measurements up there, no; not this year.

Q. Did you make any last year?

A. There wasn't any diverted last year.

Q. What is the plan? How much is it proposed to divert? A. About 12 second-feet.

Q. Altogether? A. Yes.

Q. How much of the land is proposed to be irrigated?

A. Well, I think about 2200 acres in all. That is, that has been irrigated—

Q. And will be? A. And is irrigable, yes.

COURT.—Is that land above what you are talking about? A. Yes.

Mr. WOOD.—Yes, before the river gets into Harney Valley at all. It is in the upper valley. [59]

\* \* \* \* \*

[Testimony of W. A. Griffing—Redirect Examination (Portions of).]

Q. Mr. Griffing, just two or three questions: When you left the ditches in Silvies Valley last year, how did you leave the heads of them?

A. All closed solidly. [67]

Q. And so far as you know, has any water whatever been diverted in Silvies Valley in those ditches this year?

A. No, I think there has not. At least I have been informed of that.

Q. You have had charge of the construction of those ditches? A. Yes.

(Testimony of W. A. Griffing.)

Q. They are still under construction?

A. They are still under construction.

Q. You have given no instructions whatever to open them?

A. Absolutely none. In fact I have given instructions for them not to be opened. [68]

\* \* \* \* \*

[Letter from Edward F. Treadwell to William D. Hanley Dated March 4, 1915.]

I answered that by letter of March 4th, which read as follows: "Mr. W. B. Hanley, Burns, Oregon. Dear Mr. Hanley: I regret that I was absent from my office when you called, but I gather the general object was, owing to some uneasiness on your part in regard to the Orphan headgate. I certainly hope that that can be operated with due regards to your rights, and it seems to me that our representative in co-operation with your Mr. Sterling could do so [74] without difficulty, and I am writing to the company to try and co-operate with you in every way so as to avoid any possible friction in this matter. I expect to be in Burns about April, and hope to see you at that time. [75]

Very truly yours,

EDWARD F. TREADWELL."

\* \* \* \* \*

[**Testimony of Edward F. Treadwell—Direct Examination (Portions of).**]

Q. Now, then, on the 24th of April, I understand—that is the day before you had this talk with Mr. Hanley—you did go down the west fork of the river?

A. Yes.

Q. And visited these several dams?      A. Yes.

Q. And saw the water yourself?

A. I saw the water at the Young place just as has been testified to by Mr. Griffing, going on both sides of the road, west of that. That ditch takes out of the river, right at Mr. Young's house, and slightly to the east of Mr. Young's house. Of course, I am not absolutely certain of the ownership, but it would have to go in front of his house, before it could get over into the Hotchkiss and Voegtly property. That road on both sides was flooded, and the water was not only going down through the Hotchkiss land, but it was also backing up in section 19, and flooding backwards. It was so high along the road that it sogged back into section 19. Then on the Luig property—we crossed the river at Mr. Phil Smith's place, and we came down, as I remember it, to the Luig dam. Well, I think I am in error on that. I think on that day, on the 24th, we crossed the river at some point below the People's ditch. There must be a crossing in there. We came back to the People's ditch and then we came down—we found the water all going out on the east side of the river on the lower part of section 31 [81] and we crossed right through into Mr. Luig's property,



(Testimony of Edward F. Treadwell.)

and came right down through his property, I think its full length, and the water was all over Mr. Luig's property, and within a very short distance of his house, which is over toward the river. I could not say how close to the house it would be, that that water would flood, but within what would be called a short distance. It is open country—you can see just as far as you want to. It was a sea of water, covered with ducks and everything of that kind. Now, the next day, on the 25th, when I went over the same ground, I was with Mr. Gilchrist and Mr. Griffing. Mr. Griffing is mistaken when he says that George Young was not there; as I understand, it was George Young that was there, although Mr. Griffing did not talk to him at all, and may not know him. Mr. Young was right there, and saw the water going out through his ditch at the time, or through this ditch at the time; and his house is immediately at the dam, just within a few feet of the dam.

COURT.—How about the People's ditch-

A. On that day we went to the People's ditch and that was in the same condition that it had been before. Now, as we went down on Sunday, we passed Mr. Robert Hudspeth coming up to town with a load of hay from his place; and he could not get to where we saw him without crossing this People's ditch and seeing the water in it. He didn't do anything whatever to shut it off, but was going on to town and said nothing to us whatever when we passed him on the road, of any kind. We also

(Testimony of Edward F. Treadwell.)

went through the Phil Smith place on that day and saw Mr. Phil Smith, and he stated that he helped to build the new Voegtly dam. I think his language was, if I remember rightly, that he [82] helped—I don't want to state anything I am not certain of—I think it is Carey Thornburg, but at any rate he said he helped some one to build this new Voegtly dam. At any rate, he helped on it, is what he stated.

Q. You say new Voegtly dam—do you mean the new Voegtly dam or new Luig dam—which do you mean?

A. No, I refer to the new dam that has been put in immediately above the frame-work of the old Voegtly dam. Mr. Phil Smith stated that he worked on it.

\* \* \* \* \*

Q. What was the condition of the water down on the company's land near the Island ranch—near the Island ranch house, I should say?

A. Well, I think the superintendent, the foreman, could testify more definitely on that, but on the west fork, there was a very small stream of water—comparatively small stream of water—I should think somewhere between 20 and 30 feet, second feet, of the whole river—flows right past the Island house there. I think we estimated it, guessed at it, that it was between 20 and 30 feet. On the east fork I didn't go down to the places where the company would take the water from the east [83] fork, but I did cross, I think, all of the channels

(Testimony of Edward F. Treadwell.)

that lead from the east fork to what is known as the Island ranch. That ranch is way below this property,—down in this vicinity; I mean this land that is irrigated. I crossed all of the channels that come from the east fork onto the Island ranch, and my recollection is they were all dry. There was no water coming to the company from the east fork on its ranch known as the Island ranch.

COURT.—Do all these sections, or parts of sections, with the circle, belong to your company?

A. Yes, belong to the company. In fact, *al* this land is the company land. I think they were getting no water whatever. Of course I might be in error in that, and be corrected by the foreman, but I don't think there was any coming directly from the east fork.

COURT.—Is all that land irrigated by surface irrigation?

A. All the land in the lower end of the valley is all irrigated hay land. I went all over the hay land there—thousands of acres of it—and I don't think there was ten per cent of that land that had water. I might be mistaken in that, because we drove over it, and it was just a dry hay field—all cut—had been cut the year before; in beautiful shape, but there was very little of it had water on it. But that would be an estimate that I would not want to be bound by, because I think the superintendent or foreman would know better the condition there.

Q. Well, did you have any talk with any other

(Testimony of Edward F. Treadwell.)  
of the defendants?

A. Well, not of any that I think is material, particularly. They might want something. Mr. Hudspeth, after we had called his attention to this matter, came to see me, and Mr. Dalton. [84] They both disclaimed any responsibility. That was the substance of our conversation with them, as I remember it. And Mr. Hudspeth also stated that on the next day he—I don't know whether he said the next day, or not—but he said he would see it was closed. I think Mr. Dalton said the same,—The so-called People's ditch would be closed.

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**[Testimony of Edward F. Treadwell—Cross-  
Examination (Portions of).]**

Q. From which dam is that?

A. From the Young dam.

Q. Did you have any special discussion about the People's dam and ditch?

A. I do not think so, more than the general statement that I have made. Unless I was reminded of it, I would not remember any. I don't hardly think that we went into any further detail as to that.

Q. These other men, Hudspeth and Hotchkiss, really assumed the responsibility for that, didn't they? A. The People's dam?

Q. Yes.

A. Why, no. If they had assumed the responsibility, we [88] would not have had to go after anybody else. But we took Mr. Hanley's word that he was responsible, and brought this proceeding

(Testimony of Edward F. Treadwell.)

against them all. They said—I am perfectly free to say that Mr. Hudspeth stated—if you want it, he will state it in detail—that he stated that he had nothing to do with it; that he had not opened it.

Q. Yes, well, I think they will state that they didn't open it.

A. Mr. Dalton told me the same thing. I was simply in the position—it was their dam and on their property; they could not have crossed it without seeing the water in it. That I know.

Q. Now, who put the boards, do you know, into the People's ditch headgate? The dam.

A. Took the amount you mean?

Q. No, who put them in? At the time you were there, the ditch was closed.

A. It was never closed when I saw it. It was wide open.

Q. But it was closed afterwards?

A. I have since been informed by the affidavit that they closed it on the 26th, after this proceeding was commenced.

Q. Did the dam that diverted the water from the People's ditch have boards in it when you saw it?

A. No, sir, it did not. That is my recollection of it, that it was open.

Q. Is it claimed here that that dam was ever put in place to obstruct the river, that the boards were put in?

A. Not in this proceeding. It was in another proceeding, and the Court held it did obstruct it. The Court ordered them to straighten it out. But there



(Testimony of Edward F. Treadwell.)

is nothing in this proceeding which charges that.

Q. You have omitted to go into that matter. It looks as if it was another matter, but we think that it has connection [89] with this, to show that—

A. I would be glad to go into it, Mr. Wood, and tell you what it is.

Q. I was going to tell you because you are of counsel and understand. We have a belief in our minds that you people hold Hanley responsible for the suit brought against you attacking the title to your lands up there, and that there is a good deal of feeling and bitterness, quite outside of the water question that has grown up, toward Hanley. That is our feeling.

A. You want to get my idea on that?

Q. Yes.

A. Well, I would simply state, Mr. Wood, that that matter simply related to this. One of the parties—not Mr. Hanley at all—who is contesting the water rights of this river, and claiming a large amount of water, caused to be instituted by the state, a suit to recover practically all of the company's property alleging that Todhunter and Devine, some 30 or 40 years ago, acquired it by fraud, etc. We went before the State Land Board and showed them that the suit was a mere—

COURT.—Is it necessary to go into that?

A. I think just very briefly.

Mr. WOOD.—I don't care for it at length, but I want to get the facts from Mr. Treadwell, as far as he knows them, whether there is a feeling against Hanley. I want to show motive.



(Testimony of Edward F. Treadwell.)

A. It will be very brief. I can explain that. The State Land Board announced its decision to dismiss the suit, and the next day quite a number of people began protesting against its dismissal, and among others, Mr. Hanley put a column article, in the form of an interview, in the Journal here, saying that they had us half beaten, and they should be permitted to go ahead and finish the job.

Q. Have you got the interview—the article? [90]

A. I may have it with me, but I am not certain that I have. I don't think I have, in fact. It was in response to that that we objected to Mr. Hanley doing that, by writing a letter to Mr. Corbett calling attention to the fact that the same man was attacking his titles—Mr. Hanley, as we understood it, being associated with Mr. Corbett—that his lands were acquired by the same certificates of purchase as ours were, and we thought it a very unneighborly proposition that Mr. Hanley should go in to assist any proposition of that kind. It was that matter Mr. Hanley wanted to talke to me about at the Island ranch. That is the matter we did talk about. I will say the feeling against Mr. Hanley in regard to this order is an entirely separate thing.

Q. But you are familiar with Mr. Nichol's letter to Mr. Corbett? A. Yes.

Q. Well, then, there is a feeling of hostility that Mr. Hanley is taking a part in making you trouble in your title?

A. The feeling of hostility to Mr. Hanley has been from the very first time that he violated this decree,

(Testimony of Edward F. Treadwell.)

which he violated, and has been held to have violated a few years after it was entered. Our hostility to him has been continued and consistent, from that time, and he has violated it, in our opinion, every year since that time. We have had numerous proceedings against him, without any results. So, as far as the feeling is concerned, it is there irrespective of the suit.

COURT.—I think you are getting outside of the regular inquiry here.

A. When this proceeding was commenced, Mr. Hanley again went in the newspaper and said that all of this thing was simply all right; that there was no occasion for any of this [91] proceeding at all; that it was simply a hostile proceeding to injure people,—took the full responsibility for it, by a public statement in the Journal. I have that.

**[Interview of William D. Hanley in "Oregon Journal" of April 30, 1915.]**

COURT.—Was that after this proceeding was brought

A. After this proceeding was commenced. I would like to have that in evidence. It is headed "Citation is termed attempt to drive out home owners." It is an interview of Mr. Hanley in the Journal of April 30, 1915.

COURT.—You may read that.

A. "Federal Court action instituted by rich Californians denounced by Wm. Hanley. Water Right Is At Issue. Pacific Coast Livestock Co. accused of harassing the settlers in Harney

(Testimony of Edward F. Treadwell.)

County. William Hanley of Burns, who with a score of other defendants is cited to appear in the Federal Court to show cause why they should not be fined for contempt of court, to-day declared that the citation is only 'another step' to harass settlers of Harney County by the Pacific Livestock Company of San Francisco, owner of about 100,000 acres of land in southeastern Oregon. The citation alleges that Hanley and codefendants were not to divert water from the Silvies River except under certain restrictions under a stipulated decree of 1901 and that they have continued to do so this spring. As a result, it is alleged the stream was obstructed, and the river's flow diverted onto the company's lands. 'The whole thing is simply based on the proposition that the San Francisco concern wants our country as a range, and we want it for homes,' said Hanley. 'We people want to live in our own country and develop it, while they want to keep it a cattle range for their enrichment. They have kept up a campaign of continuous harassment for years in an attempt to drive us out. They have kept the litigation in the United States Courts so the [92] ordinary man cannot defend himself on account of heavy expenses. They operate under the butcher's code—Take the best—and we stand in their way. Along the Silvies River we own probably 15,000 acres and they 50,000. Excepting myself the majority of defendants are men owning small parcels of land averaging 160 acres. They are farmers, and farmers are not wanted by this

(Testimony of Edward F. Treadwell.)

huge cattle company that wants to keep our country a range for its enrichment in California.' ". I told Mr. Hanley, when I was on his property, that every inch of his Belle-A property was range—was simply wild hay—and if he would sell that to the people, why, that would probably give us a chance to sell ours. He has never sold an acre of it. We are just as anxious to sell ours as he is.

Q. It is all for sale?

A. Yes, sir, every bit of it is for sale.

Q. Well, I say his is for sale?

A. Yes, so is ours, if we can get our price. He has never sold an acre of it. He controls more land in that vicinity than we do.

Q. Is that so, Mr. Treadwell?      A. Yes.

COURT—I think we are taking a very wild range in this matter. Its only bearing is upon the animosity that appears between these two parties. We need not take up that matter further. [93]

\*      \*      \*      \*      \*      \*      \*      \*

Q. As a matter of fact, this dam that you restored, as you say, that is, restored the river by taking out the dam, was diverting water onto section 31, wasn't it?

A. Onto 31 immediately, and then down to section 6; principally on section 6.

Q. 31 was never located, was it?

A. We will discuss that when we come to it.

Q. It never was—it is not in the decree?

A. It certainly is in the decree. Mr. Hanley is enjoined from maintaining any dam on Silvies

(Testimony of Edward F. Treadwell.)

River, except the particular ones, and this particular dam is mentioned in the decree, and all of the defendants are as much enjoined from maintaining that as any other dam except at the times permitted. And it never has been maintained before this at any time, except as permitted by that decree. That dam has been out, up to the first day of July.

Q. Of course, the decree will show for itself, but I think it might shorten matters if you would say that section 31 was not in the decree.

A. It is in the decree. Mr. Hanley himself says he owned it at the time we brought the suit. We asked that he be enjoined from maintaining any dams in the river except the particular ones.

Q. Well, we will argue that further? A. Yes.

Q. What dam did you take out besides the 31 Luig dam, when you said that "there won't be any situation"?

A. Well, my instructions were for them to take out the Luig dam, and for them to close the head of the People's ditch.

Q. Take out the Young dam?

A. No, the Young dam was a solid structure in the river [94] built in, and the Court had ordered Mr. Young to take it out, and since Mr. Young will take the stand later, I might as well dispose of that now. After the court had made its order in the Young matter—

Q. When was that made?

A. Made about two years ago. I saw Mr. Young on the streets of Burns. He came to me and talked



(Testimony of Edward F. Treadwell.)

about that matter, and I says: "We hold you, Mr. Young, responsible for that dam, and you must remove it. There is no use your saying Mr. Hanley"—that is what he said, that he helped Mr. Hanley construct it. Mr. Hanley has an interest in it—I says: "You put that dam in there; you used it, and you have got to take it out. And the conversation was rather warm, and that was all there was to it. It never has been taken out, so I didn't interfere with that because it was a permanent structure, and you cannot remove the boards without tearing the dam out itself.

Q. This gentleman wants to know if it is not a dam constructed on the general principle common up in that country, with removable boards?

A. Removable boards, except the bottom portion. It has got something like a foot, or possibly a little less than a foot of permanent boards across it.

Q. Did you see any boards in the dam, any water being diverted out?

A. Sure, the water was being diverted out.

Q. Were there permanent boards in the dam?

A. These permanent boards were in the dam.

Q. That is part of the dam structure?

A. Surely.

Q. It is removable?

A. It is not removable; I mean in the ordinary manner, without removing the nails. [95]

COURT.—That raises the water about a foot?

A. A foot or more than a foot; the actual raise of the water. And the water could not possibly have gone into that ditch without that dam. No water



would have gone in. It is at least a foot higher than the water in the river. [96]

\* \* \* \* \*

**[Testimony of John Gilcrest—Direct Examination  
(Portions of).]**

JOHN GILCREST, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows.

**Direct Examination.**

(Questions by Mr. TREADWELL.

I believe the record shows, Mr Gilchrist, that you are the superintendent of the Pacific Livestock Company? A. I am.

Q. There has been reference here made to the water in Silvies Valley. Has the company diverted any water whatever in Silvies Valley this year?

A. We have not, from the river.

Q. You know the ditches that have been constructed up there? A. I do.

Q. What is the object of those, Mr. Gilchrist? What is the object of those ditches?

A. My understanding of the object of those ditches is, when at extreme high water, to irrigate the land.

Q. Has there been anything of that kind this year?

A. There has been no high water.

Q. What instructions, therefore, did you give in regard to those ditches?

A. I instructed our foreman there, to keep all heads of the ditches tight closed, and divert no water from the river.

(Testimony of John Gilcrest.)

COURT.—Does the company own land on the upper river?

A. Yes, a large quantity of land is Silvies Valley. Owned it for very many years—30 years ago. [97]

\* \* \* \* \*

Q. Now, did you also see it after all of the boards had been put in, as testified to by Mr. Griffing, on the 4th day of May?

A. I saw it on the afternoon of the 4th day of May.

Q. That was after Mr. Griffing had seen it.

A. After Mr. Griffing had been there.

Q. Was it still in the same condition, or any change made? A. It was not.

Q. What change had been made?

A. The boards were not all in.

Q. How many boards were in then?

A. There was a drop of water over the boards that were then in, I should say, of about 2½ or 3 feet. I could not see how many boards were in, because the water prevented it. The other boards that had been taken out, evidently taken out, were lying on the two ends of the structure, and just on the banks, and they were still wet, like they had just been taken out a very short time before I went in there. But they were not all in when I saw it.

Q. You also saw the Young ditch, the Sunday of the 25th of April, did you not? A. I did.

Q. And you saw the water being diverted to the west by that ditch did you? A. Yes, sir.

Q. Was Mr. Young there at that time?

A. He was. I talked with him.

(Testimony of John Gilcrest.)

Q. Did you also see the two new dams, down by the Voegtly place? [103]      A. One new dam.

Q. One new dam?      A. Yes.

Q. Did you also see the old skeleton of the dam?

A. I did.

Q. Now, that old skeleton of a dam, Mr. Gilchrist, since the entry of this decree, has that dam ever been used, or the boards put in, or any material put in there, before the first day of July? I don't mean before the 1st day of July. I mean—well, been put in there at all? Has it been used at all to your knowledge?

A. I never recollect of seeing any boards in that dam, or it being used for irrigating purposes at all. I saw the first boards in, and the dam thoroughly stocked up with hay, stock bottom, manure, and so on, pretty early last fall; but I never had known personally of that dam's being used since the date of that decree, for irrigating purposes.

Q. Did you give any order as to what should be done with it at that time, or did you do anything to it?

A. I don't think I did last fall, unless I told Mr. Newman, our foreman, to open a water way through that. I think I did tell Mr. Newman. I am not positive as to that. We were suffering for water at the Island ranch at that time. We had no stock water. [104]

\*      \*      \*      \*      \*      \*      \*

[Testimony of John Gilcrest—Cross-examination  
(Portions of).]

Q. When you were out at the Young dam and saw Mr. Young, was it George Young, the father—Senior? A. It was.

Q. Did he tell you at that time that he did not claim any interest in that dam, that it was Hanley's? A. He did.

Q. Is that the first time that he has ever said that?

A. To me, that he had ever disclaimed any ownership in it, [112] I think that is the first time that he ever positively stated that he did have no interest in it. [113]

\* \* \* \* \*

Q. I think you said that 34 was a tule marsh, and you hadn't cut any hay. Hadn't that 34 been largely reclaimed by the operation of the Hanley drain ditch, and hadn't you cut hay there after the Hanley drain ditch was inaugurated?

A. We have cut hay there for a good many years; some hay, but more and more as the section has been reclaimed, and the nature of the vegetation changed with cutting; but the Hanley drain ditch I do not think has materially improved it. I don't know that it has improved it at all. I do not think that it has.

Q. You don't think it has. Well, the purpose of the Hanley drain ditch is to act as a safety valve, and relieve the water [118] when it is gorged?

A. It never was, and it was stated plainly that it was to drain surface water from their own land. It

(Testimony of John Gilcrest.)

was not to drain water from lands below the head of that ditch, certainly.

Q. No, no, I don't mean that, but I mean to say when the river was full, and could not carry any more, and when this surface water would come down and would turn Hanley's land into swamp wasn't the purpose of this drain ditch to relieve that excess? In other words,—we will put it in another way—there is no real necessity for that drain ditch when the river is not flooded, is there?

A. There is no necessity for it all.

Q. What do you mean by that—that there is no necessity to drain?

A. It has been used more taking water out of the river and carrying it away from the river than it has been used for drainage.

Q. Well, when it carries the water away from the river, where does it dump it?

A. Dumps it into the Embree Slough.

Q. Dumps it right on your land to your benefit, doesn't it?

A. The same water coming down its natural channel would benefit us infinitely more. We would get it on lands that we want to put it on.

COURT.—Would that go down into the main channel again after it was taken out by the drain ditch?

A. It would go into the Embree Slough, and go down, miles down, through that slough, and return to the East Fork of the river again, miles below, and

(Testimony of John Gilcrest.)

below all of our lands adjoining 34, in 2 and 10.  
[119]

COURT.—Would it go down so that the river would not take it up, and then out in your sloughs that you described this morning, and on to your land farther down?

A. Eventually it would reach those sloughs through a different channel entirely, after it had been clear out across another territory entirely.

Q. As a matter of fact, your Boat Ford dam that you spoke of really diverts and regulates this very water, doesn't it?

A. All of the water that was getting down there at the last time I was at the Island ranch was coming that way, and not down the river channel—not down its natural course.

Q. What effect has your taking out this water through the Orphan ditch had on your main lands in 3 and 4? Has it improved them?

A. It is the only available water for them.

Q. Well, I say has it improved them?

A. Yes, sir.

Q. I understood you to say, though, that there was not enough to fully reclaim them.

A. You cannot cover all of them with water from that source.

COURT.—When you speak of 3 and 4, what township is that?

A. 24-31, right west of this section 34, this swampy section 34, west and south. [120]

\* \* \* \* \*



**[Testimony of Ben Newman—Direct Examination  
(Portions of).]**

Q. You went to the Luig dam this year, did you?  
At the time it has been testified? A. Yes, sir.

Q. Will you tell the Court where the water went to  
that went out of the river at that point?

A. Well, it went out across section 6, and across  
into the northwest corner of section 8.

Q. You know Mr. Luig's land, do you?

A. Yes, sir. This northwest quarter belongs to  
Kelley. There is a slough that goes across here, that  
emptied some water into that, goes down into the  
south of 8, from there off into the southeast of 8.

Q. Did you go down and drive through the Luig  
land? A. Yes.

Q. How far down did you see water through his  
land at that time? A. Clear across his land.

Q. How near to his house?

A. Oh, possibly 300 or 400 feet.

Q. Did you subsequently pull the boards out of  
that dam? A. The Luig dam? [124]

Q. Yes. A. Yes, sir.

Q. Do you remember when you did that?

A. The 26th. [125]

\* \* \* \* \*

**[Testimony of Ben Newman—Cross-examination  
(Portions of).]**

Q. Where did the water go that went out by means  
of what you call the Luig dam?

A. It went out across the southwest quarter of 31,  
and across into 6, into the northwest quarter of sec-  
tion 8.

(Testimony of Ben Newman.)

Q. Who owns the northwest quarter of 8?

A. I think the Kelley heirs. I don't know just what ones.

Q. Then where does it flow to? It doesn't stop there?

A. No, it goes into the slough there and goes down through the southeast quarter of section 8, and across the road into section 9.

Q. Goes by regular channel? A. Yes, sir.

Q. Who owns section 9?

A. I don't know whether Mr. Hanley does, or some colonization people. It was road land at one time, at least.

Q. Does any of this water go by this course on to company land? A. Yes, sir.

Q. Where?

A. It goes from there on down into what is called the Frye field.

COURT.—That is in section 16?

A. No, sir, I don't believe it is. That is a school section. It goes off down into section 10.

COURT.—Section 10, east of 9?

A. Yes. [133]

Q. Then the water that went out from the Young dam, I think you said went across Hudspeth place?

A. No, sir, I didn't say it.

Q. Then I am mistaken. Where does that go?

A. It goes out across Mr. Hotchkiss' land and on the Thornburg land.

Q. Hotchkiss? A. Yes.

Q. I thought you said Hudspeth? A. No.

(Testimony of Ben Newman.)

Q. Go ahead and describe it; describe its flow, where it goes?

A. It goes right across the Hotchkiss place, and across the old Voegtly place. A little bit of it gets into that section of road land, I believe, that lays west of the Thornburg place.

Q. Where does it go from the Voegtly place?

A. Goes into that road land, part of it.

Q. It stops there, does it? A. No.

Q. Where does it go?

A. It goes further on to the south.

COURT.—That all goes to the west?

A. Southwest, yes.

COURT.—Any of it flow to the east?

A. Not from the Hotchkiss.

COURT.—I mean from the Young dam.

A. No, sir, it don't go to the east. It goes to the west.

Q. Well, does any of that get on to company land, and if so, how?

A. It does, after it gets high enough to get on to that company land, there in 32, I guess it is.

Q. What do you mean by high enough?

A. When the water gets far enough down there to reach it.

Q. Do you mean in elevation—when the water rises high enough in the river? [134]

A. When it gets on its level, so as to get over that little bank that is there.

Q. I don't believe that I am familiar enough with the country to understand what you mean. Do you

(Testimony of Ben Newman.)

mean when it gets high enough, the water level in the river, or when, after having been diverted by the dam, the water reaches a high enough level to run on to the land?

A. After it has been diverted, and gets out there, and gets high enough to reach that section, why, then, of course it covers a small portion of that.

Q. The company owns section 36, in that township and range, doesn't it?     A. 36?

Q. School section.

Mr. TREADWELL.—He means this one out here, I suppose.

A. 36.     That is 35.

Mr. TREADWELL.—Which one do you mean—the one out there west of 31?

Mr. WOOD.—Yes, west of 31.

Mr. TREADWELL.—That is in the other township over here? The one that is irrigated from the Warm Spring, I suppose. Is that the one you mean?

A. Yes.

Mr. WOOD.—Yes, I do.

Mr. TREADWELL.—You want to give us the water everywhere except where we want it.

Q. Township 33, Range 30. Well, I wanted to get the ownership of that fixed, if you know. If you don't know, all right. Your duties do not extend beyond the Island ranch, then?

A. Yes, sir, it extends on all the company property that lays in Harney Valley. [135]

Q. Then you would know whether you are irrigating section 36?

(Testimony of Ben Newman.)

A. I have said this water would go across 36, if there was enough to reach that far, if it was turned out.

Q. The company owns 36?

A. Yes, I think if that is what you mean, that adjoins 31.

Q. Down the west side of 36 you have a ditch, haven't you?

A. Yes, sir. That is on the east side of 36.

Q. Yes, on the east side. That catches the water, doesn't it? A. Yes, sir.

Q. Where does that ditch deliver the water in the river? Can you describe it by section line, near what point?

A. We start about this corner of 31 there, the southwest corner of 31, near the corner.

Mr. WOOD.—You didn't examine him on those dead cattle, did you?

Mr. TREADWELL.—No.

Q. Do you remember anything about the conditions of the weather as to cold and freezing, through the month of March up there?

A. Why, it was not freezing so very hard through the month of March, no. It had froze in February.

Q. Wasn't it an unusually severe winter??

A. Well, I don't think so.

Q. About an average?

A. About an average. Possibly there was a few days, maybe ten days, was a little colder than an average.

Q. What ten days would those be?

(Testimony of Ben Newman.)

A. Well, I couldn't say. I didn't keep any dates of it.

Q. But you think the month of March was not particularly cold? A. No, sir, it was not. [136]

\* \* \* \* \*

**[Testimony of Ben Newman—Redirect Examination (Portions of).]**

Q. This school section that has been referred to as the Warm Springs school section? A. Yes, sir.

Q. What is the principal method of irrigating that section?

A. Well, we could irrigate part of it from the Warm Springs, and part of it from this ditch that runs along the east side of 36. We put some little dams in there to spread the water.

Q. Which water?

A. The water that comes down from the Warm Springs, and also some of the water, probably, that comes across in this Hotchkiss and Thornburg ditch.

Q. The principal way you have of irrigating it is from the springs? A. Yes.

Q. That is the principal way? A. Yes, sir.

**[Testimony of Ben Newman—Recross-examination Portions of].]**

**Recross Examination.**

Q. Has it been fixed here, the date when Hanley is supposed to have closed the drain ditch, and you got sufficient water for stock purposes? Can you give the date, approximately? A. The date?

Q. Approximately the date when you got relief



(Testimony of Ben Newman.)

on the stock water proposition.

A. I think it was the 7th or 8th.

Q. Of April?      A. Yes, sir.

Witness excused. [137]

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**[Testimony of William D. Hanley—Direct  
Examination (Portions of).]**

Q. Well, where was this land situated that you leased in 29—on the west or the east side?

A. It was the west half of 29, that would get water—west half of 29 would get water from this Young dam, leased to a man by the name of Dickinson.

Q. Well, now, I say, would that go out on the east or the west side of the river?

A. On the east side of the river.

Q. So that when you say water had been going out on the west side, that would not benefit you at all.

A. Not at all, no. I don't want to quite say that the water had [146] been going out on the west side. There was water out on the west side. There was no water going out on the west side when I was there.

Q. But there had been some out?

A. There was water out on the west side. There had been water out there.

Q. Water standing there?

A. Yes, water standing there.

Q. The marks of where the water went?

A. Yes, the water was standing on the road, and there were marks of water. The water was out on the west side. There was water out on the west

(Testimony of William D. Hanley.)

side. It might have come out from some other place.

Q. But that has all nothing to do with your section 29?

A. No. No, nothing to do with it.

Q. Now, I think you have already said, but did you have any conversation, or give any encouragement to Young and Hotchkiss, or Thornburg, to make use of this dam, or divert any water this year?

A. No, sir; no, sir.

Q. Now, this dam that is called the Young dam, as I understand, is a new dam different from the one that was in existence at the time of the decree. Is that so? A. Yes, sir.

Q. What is the difference?

A. Well, the difference is in the location. The dam that he had at the time of the decree was below it on his own land, and this dam was built afterwards, and built above. These dams generally have to be built, or reconstructed as often as once in every 10 to 15 years, at the outside.

COURT.—Who reconstructed the Young dam?  
[147]

A. Why, Mr. Young reconstructed it. I think probably that I was some party to it myself. That is, that I put in, but I am not just prepared to testify. Those little minor matters slip away from me. But since I have had section 29, I have got water out of it every year to irrigate it since the decree.

Q. I think that that is one of the points on which Mr. Gilchrist and perhaps Mr. Newman, said that

(Testimony of William D. Hanley.)

the water had not been taken out, except this year. Now, you say that you have taken water out by means of this dam every year?     A. Yes.

Q. For how long?

A. Why, to some degree, ever since I have had section 29.

Q. How long has that been?

A. It is 12 years, I guess.

COURT.—I understand in this proceeding, there is no complaint that water has been taken out on the east side. It is wholly on the west side of the Young dam, if I get the connection of the story.

Mr. WOOD.—Yes, that is my understanding of it. But I want to show it in relation to the charge of conspiracy, in aiding and abetting—to show lack of motive, I mean.

Q. Now, about the structure of the new dam as compared to the old dam, does the new dam raise the river any higher?     A. No, sir.

Q. Do you remember anything about this permanent board that is nailed across the bottom of the new dam?

A. Well, I wouldn't go into detail as to just what it has across it. I would say that this dam is probably a foot above. There is a drop. It is above the bottom of the river. There is a drop. The water drops after it passes through it. [148]

COURT.—Does that divert the water?

A. No, no.

COURT.—Suppose the river is high, will it divert it then?

(Testimony of William D. Hanley.)

A. No, I don't think so. This river, I think, to the mind of the Court, and the people generally, the word "river" is a great deception. It is this water coming out of the mountain, and we call it the river, because it tries to hold onto its water, and in trying to hold on to its water, it builds up its banks above the level of the country around.

COURT.—I have seen it—not in there but other places.

A. And the difference between a slough and what they call the river channel, is that the slough is reaching out to grab water all the time. It has its fingers out to catch it, and it gets into it, so that this channel going down through until it gets into 35 on one side, and then into what is known as the Potter Swamp on the other, holds up clear above the level of the ground, I think probably up to  $2\frac{1}{2}$  feet—3 feet, maybe.

Q. Now, do you know whether the water in this new dam—do you know by observation, of your own knowledge, that the water by this new dam is backed up to a higher level than it was by the old dam?

A. Well, the old dam was practically the same structure. It was above the level of the river. It was above the level.

COURT.—The bed of the river?

A. The bed of the river. The fact of it is, all of those early dams were built above. It was a great undertaking to build any structure to hold, and all of them were built above. They could put a solid structure underneath easiest when they built them

(Testimony of William D. Hanley.)

all above the level of the river.

Q. Now, by the third article of this Information, you are charged with aiding and abetting Carey Thornburg and Hull Hotchkiss in the use of a dam in the northeast quarter of Section 30 [149] situated near the south—let me get this straight—the statement is that originally near the south line of section 30, there was the old Voegtly dam, and that had been abandoned and that Hotchkiss and Thornburg were permitted to use this Young dam in lieu of the old dam, and its skeleton was left in the river, and that that skeleton had not been used—it had been abandoned—but in 1914, and again in 1915, that Thornburg and Hotchkiss, blocked by means of the old skeleton the flow of the river. Now, as I understand it, there is no charge against you individually there for the use of that or the benefit of it, but only that you aided and abetted, and encouraged them in it. What is the truth of that?

A. Well, I ran for office last year, and I was not at home. When I did go home last fall, they were just finishing work on it, the first time I went to 31. And that dam has never been abandoned. There has been boards in that dam, and that dam has been operated, I would say, every year. I don't know of a year when it was not operated.

Q. Is this the old Voegtly dam?

A. Well, I don't know just what the name of the dam is. We know it as the Thornburg dam.

Q. Near what section line is it located?

(Testimony of William D. Hanley.)

A. Well, it is just north of 31.

Q. That would be near the south line of 30?

A. South line of 30.

Q. Well, now, did you do anything to encourage these men in the use of that old skeleton—whether they had a right to it or not—whether they put the boards in or not,—the question is, did you instigate it, or encourage it, or have anything to do with it?  
[150]

A. Oh, I never had anything to do with it. I had no knowledge of it being rebuilt until last fall, when I went to 31, I would say, in November.

Q. How about this year? Did you encourage the use of it?

A. I did go up to it the other day, but there isn't any water in it. It is not being used at the present time.

Q. I know, but that is not just exactly the point. You say it isn't being used, but the point charged against you in this instance is, that you encouraged them to go and use that and violate the decree. Have you ever done it?

A. No, sir. As I say, the dam has been used every year since I have been operating 31.

Q. Well, not for your benefit?

A. No, but it has been an operated dam.

Q. By whom?

A. By Carey Thornburg and Mr. Hotchkiss.

COURT.—Was it before May 12th?

A. Well, I wouldn't get technical on dates. The fact of it is, I don't know much about the inside de-



(Testimony of William D. Hanley.)

tail of keeping records on those things. I am off on these outside ranches so much of my time that in these periods outside of the 21 dam—outside of the 21 dam, I would say that, in a general way, I do not really know technically.

COURT.—I understand—

A. But when I would speak about, through the season sometime I am over there.

COURT.—I understand the parties have a right to use these dams, most of them, after May 5th or 12th, or along there. Of course, it becomes necessary then to determine when they were used.

Mr. WOOD.—Yes. [151]

A. Well, I wouldn't like to be a witness on to the details of when those boards were put into these dams in the different places.

Q. It wouldn't do you any good, would it?

A. I wouldn't want to say that it didn't. There is a corner of 31 that gets water off it.

Q. Are you talking now about the old skeleton—the old one?

A. Well, I am talking about—I never knew it as a skeleton. It has always been a live man.

Q. Well, apparently, by this information, there are two. The old skeleton, as they call it, near the south line of 30, and then this new one that was put in later on.

A. Well, the dam that was built last fall, was built, generally,—general knowledge—was built in the same place that the old one was built. It might have been a little bit above, or a little bit below, but

(Testimony of William D. Hanley.)

it is built in the same place.

Q. Well, as I said, you know that dam, as far as you are concerned, is not in the information. The information against you is encouraging these men to go and do it.

A. I did not encourage them.

Q. I understand you did not do that.      A. No.

Q. By article 4 of the information, you are charged with aiding and assisting P. G. Smith and Carey Thornburg to violate the decree by constructing a new wooden and rock dam in the west fork of Silvies River, immediately above the Voegtly dam, extending clear across the river; and again, it didn't charge, as I understand, that you would get any benefit out of that, but only that you aided and encouraged them to violate the decree. Is that true?

A. No, I did not. As far as my knowledge goes, they are getting [152] one more dam in there than I know anything about.

Mr. TREADWELL.—What are you talking about—the new Voegtly dam?

Mr. WOOD.—Yes.

Mr. TREADWELL.—You just said it was built last fall. You said you were there and saw it.

Mr. WOOD.—This is the wood and rock dam.

Q. That is the one you meant was built last fall?

A. Why, I wasn't closer to it than just riding up to the fence in 31, south of it, and calling Mr. Thornburg over to the fence, and talking to him about feeding cattle last fall,—when we were going to put cattle on feed. He feeds out the hay on 31. And

(Testimony of William D. Hanley.)

that was the first that I knew about it, and as far as the detail, I have never been to it.

Q. Well, did you encourage them to use it or build it?     A. No, sir; no, sir.

Q. Over there on the west fork—is it any benefit to you?

A. Well, I would say it is friendly to me. It does irrigate some of 31—that is, the water spreads from it. [153]

\*       \*       \*       \*       \*       \*       \*

Q. Well, it isn't there, but I will state it from memory in this same connection, there has been a supplemental, or additional information filed against you for contempt in having the boards in the 21 dam on the 4th of May, instead of the 5th of May. Do you personally know anything about that?

A. I got back to the ranch the evening of the 3d of May, and in the morning I went over to the office, which is facing west from the house, my living house, probably a distance of 200 feet; and I went to the office and worked over routine matters of the office, with my secretary, and accountant of the company, Mr. Sterling, till noon, and had my car ordered to go to the P ranch in the afternoon, and I went over to my own house, and Mrs. Hanley had a little lunch set for me; and when I came back to get my car, I seen the gulls—the gulls over in 21—and, then, of course, with a little observation, I seen the water. That was on May 4th. I seen the water running down in this ditch. The gulls is always [168] a mark of water being turned on new

(Testimony of William D. Hanley.)

ground. And I immediately went into the office and said to Mr. Sterling: "This is only the 4th—why is that water out on 21?" Well, he said he didn't know. Well, I said, "That water must be stopped and stopped right away, because our neighbors are feeling so much contempt about it, that I don't want a little day's gnat of water," and Mr. Sterling—I got into my car, and he immediately went to attend to it, and he will testify later what he did. Mr. McLaren, too, is here, as a witness on that. [169]

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**[Testimony of William D. Hanley—Cross-examination (Portions of).]**

Q. Now, in regard to this People's Ditch that was said to be open and carrying water, that goes right down onto your section 5, does it not? A. Yes.

Q. And that is where the water was going, was it not?

A. If there were water in that ditch, it were going there.

Q. And you knew it was going there?

A. Oh, no, I didn't know, Mr. Treadwell, and I told you that I didn't.

Q. I didn't know that you told me you didn't.

A. Yes, I did. I told you that the next day I would go over those things with you, and that I didn't know anything about those other neighbors up there, but I was responsible for the boards being in the 31 dam.

Q. Who has got charge of your section 5, Mr. Hanley? A. Mr. Ryan.

(Testimony of William D. Hanley.)

Q. Mr. Ryan?      A. Mr. Ryan, yes.

Q. When were you down that side of the country before this proceeding was commenced?

A. I don't know, but I don't think I had been on 31 before, since we were taking—

Q. Section 5 I am talking about.

A. Oh, nothing more than going by.

Q. But you did go by it?

A. That is, on the road.

Q. And you cannot go by on the road without knowing that the water [196] is on it, can you?

A. Well, it hasn't had much water on it.

Q. It has had water on it, and it was visible, too, wasn't it?      A. Yes.

Q. Don't you cross the so-called People's Ditch, to get down there where you went?      A. No, no.

Q. Did you cross it?      A. No.

Q. Did you see water in it?

A. I crossed the People's Ditch the day after you was there, that I told you that I would go and look.

Q. Yes, but I am talking about before that time.

A. No.

Q. Do you claim a right to irrigate section 5 from the People's Ditch?

A. I claim a right to irrigate it, Mr. Treadwell. I claim a right to irrigate it.

Q. You claim the right to use the People's Ditch to irrigate it, do you?

A. It always has been irrigated.

Q. Did you tell your formeman that he could use the People's Ditch for that purpose?

(Testimony of William D. Hanley.)

A. Certainly, I told him to irrigate it.

Q. Just to go to it and irrigate it?

A. Yes, to irrigate it.

Q. How long have you owned section 5, Mr. Hanley?

A. Why, I would say I have had a contract on section 5, oh, probably eight or nine years; but I would refer back to the record of the contract.

Mr. TREADWELL.—I guess your Honor wants to take recess now.

The COURT.—Yes.

Mr. TREADWELL.—I would like to ask that Mr. Hanley produce [197] the letters that I have written him,—I think I have written them all through Judge Webster,—in which we offered to cut that channel through there which he has been talking about. You will find my letters, where I have received no reply from it whatever.

A. There is no reason to answer. We can just go at it and do it.

Q. Just get those letters.

Mr. WOOD.—You say they were written to Judge Webster?

Mr. TREADWELL.—Yes, I sent a copy to Judge Webster of any letter I have written.

Mr. WOOD.—I don't know that Judge Webster will be in town to-morrow.

Adjourned until 10 A. M.



Portland, Oregon, May 11, 1915, 10 A. M.

WILLIAM D. HANLEY resumes the stand.

Cross-examination (Continued).

(Questions by Mr. TREADWELL.)

Mr. Hanley, you stated that you got section 5 about eight years ago. Did you at the same time, or since, enter into any contract with the owners of the People's Ditch allowing you to use it? A. No, sir.

Q. Have you got any such contract? A. No, sir.

Q. Did you ever have any such contract?

A. No, sir.

Q. Did Colonel Wood have any such contract?

A. I think that probably there was some kind of an agreement under the right of way, but I am not prepared to make a witness on that. [198]

Q. Do you claim any interest?

A. But I am not going to say that there was any contract, but there has been some common knowledge that there is something.

\* \* \* \* \*

Q. Now, do you claim an interest in the People's Ditch? A. None at all.

Q. Didn't you testify in this court, Mr. Hanley, that there was such a contract, and that you had such a contract with those people?

A. Well, if I did, Mr. Treadwell, I would rather leave it to the record than attempt to testify.

Q. You would rather leave it to the record?

A. Yes.

Q. Do you know where the contract is now?

A. No, sir. [199]

Q. If there is one, you don't know where it is?

(Testimony of William D. Hanley.)

A. No, sir.

Q. You haven't got it—is that right?

A. Well, I may have it, but then I am of the opinion I haven't got it.

Mr. WOOD.—We can produce the duplicate of it. I don't know where the original is.

Mr. TREADWELL.—That is what I would like to have, if you please.

Mr. WOOD.—I don't know where that identical contract is, but we can produce a printed duplicate.

Mr. TREADWELL.—I wish you would do that.

Q. So the best of your information then is, that there is a contract that you have had, with the people who owned that ditch? In connection with this section 5?

A. There never has been no question about the irrigation of section 5. The water comes from the north, south, from all of the openings in the river. The main bulk of it probably comes from the 31 dam. It has been a hay section. It has been cut—it has been cut for hay probably for 30 years. [200]

\* \* \* \* \*

Q. If you use it on the 4th of May, it has just the same effect as if you did it on the 5th of May, hasn't it? A. Exactly so, yes.

Q. Who put those boards in the dam on the 4th of May this year? A. Mr. McLaren.

Q. He is your superintendent, is he?

A. No, sir.

Q. What is he—foreman, I mean, on the ranch?

A. Well, he is kind of part of my business.

(Testimony of William D. Hanley.)

Q. Well, what relation has he got to your property, Mr. Hanley, and yourself?

A. Well, Mr. McLaren has been with me about 35 years.

Q. Well, he works for you, doesn't he?

A. Well, no, not specially so, only when I send for him to work for me. He has land and ranches of his own. He has boys that have land that we have let them have.

Q. He was working for you at this time, wasn't he?

A. Yes. [210]

\* \* \* \* \*

[Telegram from Delger Trowbridge to Edward F. Treadwell of May 12, 1915, Containing Portion of Letter from Edward F. Treadwell to Mr. Lionel S. Webster, Dated October 26, 1912.]

“San Francisco, Calif., May 12, 1915.

Mr. Edward F. Treadwell:

Care Clerk U. S. District Court, Portland, Ore.

Part letter October twenty-sixth, nineteen twelve, to Webster, as follows: ‘We would therefore be willing to arrange that a ditch might be connected with the twenty-one ditch, bringing water down to section thirty-four and as this would be made necessary by reason of the changed channel it would only be proper that we should stand half of the cost of this ditch, as well as the new channel. The water could readily be flumed over or siphoned under the drain ditch. If this arrangement meets with the approval of Mr. Hanley, the work could be done and the plans prepared by an engineer agreed upon by the parties,

“(Testimony of William D. Hanley.)

or we could each appoint an engineer and have them work out the plans together.’ Delger Trowbridge.”

[214]

Q. Now, do you claim any interest in either the new or the old Voegtly dam?

A. No, sir.

Q. It is on your property, is it not?

A. No, sir. What dam are you speaking of now? The Thornburg dam?

Mr. TREADWELL.—I am wrong about that. I will withdraw that. It is my error. Yes, the Thornburg dam.

Q. What was Mr. Thornburg’s relation to your company, Mr. Hanley?

A. Mr. Thornburg cuts the hay on 31, and feeds it out.

Q. That dam will turn the water out right above your section 31, will it not? A. Yes.

Q. And any water that is turned out by that dam will flow on to your section 31, will it not? A. Yes.

Q. And do you say that you didn’t contribute any part of the expense of constructing that?

A. No, sir, I didn’t.

Q. Was Mr. Thornburg working for you when he constructed it? A. No, sir.

Q. Well, he was in your employ at that time, was he not? A. No, sir.

Q. He was not?

A. Mr. Thornburg is paid a ton price for the work that he does.

Q. When I say “in your employ,” I mean you had

(Testimony of William D. Hanley.)

an arrangement with him by which he ran your property on shares? A. No, sir.

Q. Well, was he handling your property at that time in any way?

A. He were handling the crops on 31, at a price per ton.

Q. So that he was working for you in that way, and being paid so much per ton for the hay? [215]

A. Yes.

Q. So when you say he was not working for you, you are not quite accurate, are you?

A. Well, I don't mean it under the terms of a man that is given specific orders for all of his time.

Mr. TREADWELL.—Do I understand, Mr. Wood, that you have the contract with the People's Ditch Company that has been asked about?

Mr. WOOD.—There never was any such contract, to my knowledge.

Mr. TREADWELL.—So when you said there was, you were referring to something else.

Mr. WOOD.—I told you I would bring the contract with Charles Altschul for selling that land, which has a printed clause in all contracts, reserving to himself any water rights for other lands. But for the People's Ditch, as far as I am concerned, I would say I never heard of it.

Q. Well, then, under those circumstances, I will just call your attention, Mr. Hanley, to the following testimony, which you gave in this case: "Q. Have you any interest in the ditch known as the People's Ditch? A. I only have an interest in it, in the use

(Testimony of William D. Hanley.)

of the water. Q. In what way have you interest in the use of the water? A. Interest in the use of the water through the right of way of the ditch? Q. Was that ditch dug through there before you had any interest in 31? A. Before I had any interest in 31. Q. Was there any agreement between the owners of 31 and the people that dug that ditch? A. Yes, sir. Q. In writing? A. Yes, sir. Q. Have you got that, Mr. Hanley? A. No, I have not. Q. Do you know where it is? A. I think so; I think Mr. Wood has it in Portland. Q. And could you state what the substance of that is, Mr. Hanley? Do you [216] remember it? A. Well, in substance the lands of 31 and 5 have the right to irrigate the lands of that ditch. Q. The lands of that ditch? A. The lands that the ditch passes through in 31 and 5. Q. That is, they have a right to use that People's Ditch for the purpose of irrigating the land in section 5, and in section 31? A. And in 31, and they have always used it. Q. Did you own section 5 at the time of the decree? A. No, sir. Q. When did you acquire that? A. I think about the same date as 31." Now, does that refresh your memory any as to there being such a contract?

Mr. WOOD.—Just a moment, Mr. Treadwell. I can throw a little light on that, in a general way. Charles Altschul never gave the right of way for an irrigating ditch without reserving as his compensation, that he and his successors should have the right to use that ditch themselves. I do not know that there is any such right of way contract here in the



(Testimony of William D. Hanley.)

case of the People's Ditch. I do not know that he ever made or gave them any deed of right of way, but if he did, then that general condition will be followed: That he and his successors are to have the right to use the ditch in common for their purposes.

Mr. TREADWELL.—We do not accept that statement.

Q. I ask you, Mr. Hanley, do you remember getting any such contract from either Dalton or the Kelley estate, or Mr. Hudspeth?

A. We have no such contract, Mr. Treadwell, and I would say that as far as all our relations is concerned, irrigating those sections as people living there, that it has always been perfectly neighborly.

[217]

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**[Testimony of William D. Hanley—Redirect Examination (Portions of).]**

Q. You spoke about a contract with the People's Ditch Company. Have you ever yourself entered into a written or an oral contract with those people?

A. Why, I would say no, outside of no general misunderstanding between us, that since I have operated as a leasor and owner, there has never been no question of controversy between us. I get what would be called mixed water.

Q. Well, then, what contract did you refer to in your testimony and in your answer to Mr. Treadwell's question? You said that, if there was a written contract, I had it.

A. Well, I would say that this controversy has re-

(Testimony of William D. Hanley.)

freshed my memory a little bit on that, but I am rather under the impression that it stands in the form of a letter from you, maybe, to Mr. Dalton, or some of these witnesses that are here, but I am not prepared to say anything further about it than that there is a supposition in my mind that there were some such a letter at the time they dug that ditch.

Q. At the time they applied for right of way?

A. At the time they applied for right of way.

Mr. WOOD.—Probably at the time they applied for a right of way, there is such a letter, but I don't remember it.

A. But there never has been any controversy about any operating on this section. [230]

Mr. WOOD.—Most of them never applied for a right of way, I would say that.

Mr. TREADWELL.—Most of them just went in and dug them. You didn't get patent, as I understand it, to that road land until 1893. It was a serious question as to what you would get.

Mr. WOOD.—We got fee simple to title to the road land.

Mr. TREADWELL.—1903 you got your patent, didn't you?

Mr. WOOD.—We got the title when the grant was made. To save time, I would like Judge Webster to ask any questions that he has in mind. It is easier than for him to whisper them to me.

COURT.—Very well. What do you wish to ask, Judge?

Mr. WEBSTER.—I am a little bit embarrassed—

(Testimony of William D. Hanley.)

I don't want to take up any extra time of the Court; but I don't believe it has been clearly expressed to the Court just the part that the drain ditch—

COURT.—Suppose you elaborate that in your argument.

Mr. WEBSTER.—Well, I will, only I would like to have the explanation from the evidence to your Honor, to show what part it plays in the irrigation, and why it is that Mr. Hanley objects to the Orphan headgate in connection with 27 ditch, and why he objects to the opening of the channel below. Now, he has not made that clear, and I think there is a misunderstanding in the answers he has *has* made to these questions.

Mr. TREADWELL.—He certainly elaborated it a great many times yesterday.

Mr. WEBSTER.—Yesterday I was not here. There is where I am at fault.

COURT.—I think the Court has about all the light there is on that subject. It was gone over quite thoroughly yesterday. [231]

\* \* \* \* \*

**[Testimony of George McLaren—Cross-examination  
(Portions of).]**

Q. Now, Mr. Wood I don't believe asked you about putting the boards in the 21 dam, has he?

A. No, sir.

Q. Well, did you put the boards in the 21 dam this month? A. Yes, sir.

Q. When did you put them in?

A. I thought I put them in on the 5th of May.

«(Testimony of William D. Hanley.)

Q. You thought you put them in on the 5th?

A. Yes, sir.

Q. But you didn't, did you?

A. Well, I didn't know any different until Mr. Ryan came and told me.

Q. When had you put them in?

A. Well, he said it was the 4th. I made a mistake in the day.

Q. What time of the day did you put them in?

A. About nine o'clock or a little after.

Q. In the morning? A. Yes.

Q. Now, you didn't take them out, did you?

A. No, sir.

**[Testimony of George McLaren — Redirect Examination (Portions of).]**

Redirect Examination.

Q. Did you put the boards back in the 21 dam, on the following day? A. Yes, sir.

Q. About what time of day did you put them back?

A. About nine o'clock.

Mr. TREADWELL.—Well, then, you took them out once.

Mr. WOOD.—No, he didn't take them out. He put them in twice.

Mr. TREADWELL.—Oh, I see. You mean he put them in.

A. I forgot, really. I was honest. I thought it was the 5th of May when I put the boards in.

(Testimony of George McLaren.)

COURT.—You made a mistake as to the date.

A. Yes, sir.

Witness excused. [247]

\* \* \* \* \*

**[Testimony of John Ryan—Direct Examination  
Examination (Portions of).]**

Q. Did you observe any dead cattle in the river down in section 35?

COURT.—I don't think it is necessary to take up the time [252] with those obstructions in the river made by dead cattle getting in. I don't think there is enough in that to take up the time of the Court with it. It doesn't appear that Mr. Hanley is chargeable with getting them in there, or anybody else in particular, and I don't think it is necessary to follow that any further.

Mr. WOOD.—All right, your Honor.

Q. Did you see this new bridge that was built?

A. I have crossed it, yes, sir.

Q. Is it let down into the bank of the river, or laid on the top?

A. Why, it looks like it was laid on top. I never examined it closely.

Q. Did you notice whether there was a foundation board under the stringers? A. I did not.

Q. Is it any obstruction to the flow of the river?

A. Well, I shouldn't think so, being on top, and as the river gets to the top, it goes over the banks in every direction.

Q. Now you, I believe, took out the boards from the 21 dam on May 4th? A. I did.

(Testimony of John Ryan.)

Q. Under whose orders?     A. Mr. Sterling's.

Q. And about what time of day was that?

A. Well, I should judge about two o'clock.

Q. What reason have you to estimate it at that?

A. Well, I had dinner at the ranch, and I drove to Burns, and stopped a few minutes for the mail, and turned around and came right back, and I had a pretty lively team, and I don't think it would take over two hours to drive eight miles.

Q. Had your dinner at twelve o'clock?

A. Yes, sir.

Q. Now, did you take out all of the boards?

A. I did not, no, sir.     [253]

Q. Why not?

A. The head of water being so great, and the foot-board being high from the bottom of the dam—

Q. From the floor of the dam?

A. From the floor of the dam after you get out a certain number of boards, there will be such excessive head of water over there that you cannot do it. If you go to catching one of them boards, it will drag you in. I took out all that I could take out, at that time until the water would run down. I think perhaps there was, oh, I should judge perhaps three boards maybe, in the bottom—perhaps raise the water, perhaps it would be an elevation of maybe 20 inches or two feet; that is, out of the river. I didn't take the boards out of the ditch that leads east from the river. That was left closed.     [254]

\*       \*       \*       \*       \*       \*       \*       \*

Q. There is one thing I want to make clear; You,



(Testimony of John Ryan.)

on the 4th of May, took out all the boards in the 21 dam that you could?     A. Yes, sir.

Q. I will ask you whether what you took out lowered the river enough so that it stayed in its banks, and didn't go out?

A. Well, I was not there only just a short time, and a bank of water like that takes some time to run down, you know. [255] a few minutes. I drove over to where Mr. McLaren was sitting close, and told him what I had done, and the orders that Mr. Sterling had given me. I says: "You go, pretty soon when the water runs down, and see if you can get some more of them out." And I went home. I had five or six miles to drive, and other work to attend to, and didn't stay and watch it. [256]

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**[Testimony of John Ryan—Cross-examination  
(Portions of).]**

Q. Mr. Ryan, how did you take boards out of the 21 dam?

A. I had a little iron hook there to take them with.

Q. You have a platform across the top of the dam?

A. Yes.

Q. Do you reach your hook down, put it under one of those boards, and pull it up on two affairs; it runs up and down on?     A. Yes, sir.

Q. You mean to say you cannot pull those out down to the bottom?

A. I didn't think so, I couldn't.

Q. You couldn't?     A. No, sir.

(Testimony of George W. Young.)

Q. You could pull out the top ones, but you couldn't pull out the bottom?

A. I got down till there was a couple of feet of water; you put anything into water like that, reaching down, a short hook reaching down to hold it, and the water will take it away from you. You cannot do it. You cannot hold and steer it, and make it [257] go where you want it.

Q. You do take them out down to the bottom, don't you, at times?

A. That is the first time I have taken any out. This spring has been my first.

Q. You are a new hand at irrigation, are you?

A. Yes, sir. [258]

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**[Testimony of George W. Young — Direct Examination (Portions of).]**

GEORGE W. YOUNG, a witness called on behalf of the defendants, being first duly sworn, testified as follows.

**Direct Examination.**

(Questions by Mr. WEBSTER.)

You live in Harney County, don't you, Mr. Young?

A. Yes, sir.

Q. And you are charged with contempt here, and I want to clear up first of all one of the things about it. You were here once before, under a charge of contempt in this court, weren't you? A. Yes, sir.

Q. I wish you would tell the Court about the payment of costs in that case, how that came about that you haven't paid it.

(Testimony of George W. Young.)

A. Why, I instructed Mr. Webster—

COURT.—I don't think that is material here. They are not trying to hold him for contempt here because he did not pay that cost.

Mr. WEBSTER.—That is what this says, that is one of the charges.

COURT.—Is that your idea?

Mr. TREADWELL.—Not at all. We simply say he has not purged himself of contempt, by paying the costs and removing the dam.

COURT.—Then confine yourself to the dam.

Mr. WEBSTER.—Very well; if you don't want to hear it, I don't want to go into it.

Q. You may tell about your dam, the dam that is called the Young dam. Was there such a dam as that in the river, at the time this decree was granted?

A. No. Oh, the old dam? [283]

Q. Yes, the first decree.

A. Yes, sir.

Mr. WEBSTER.—I will call your Honor's attention to this diagram.

Q. You made this, did you? A. Yes, sir.

Q. You made it from your personal knowledge of the things on the ground there? A. Yes, sir.

Q. I wish you would point out to the Court the old Young dam, that was there at the time the original decree was made. Where was it?

A. It is right there.

Q. That is in—

A. The northwest quarter of the northeast quarter of section 30.

(Testimony of George W. Young.)

Q. Section 30, Township 23 South, Range 31.

COURT.—The northwest quarter of the northeast quarter of section 30?

A. Yes, the northwest quarter of the northeast quarter. This is the northeast quarter of section 30. This is section 30 here.

COURT.—I see.

A. That is the northeast quarter.

COURT.—It isn't located there where it is here at all.

Mr. TREADWELL.—Yes, there isn't very much difference between them if you will turn them around the same way. (Referring to the two diagrams.)

The only practical difference there is, they have the river running close to the line. As a matter of fact, it is something like probably 300 feet away from the line.

Mr. TREADWELL.—Turn this around the same way the Judge has it. Now, they are both alike. [284]

A. That map shows almost the center of the quarter.

COURT.—I have got it fixed now.

Q. Is that dam there now, Mr. Young?

A. Well, the skeleton of it is still in the river.

Q. The old dam rotted out, did it? A. Yes.

Q. How far is that from the north line of the section? A. It is about 300 yards.

\* \* \* \* \*

Q. Do you have any ditch there that leads out of the dam? A. No, sir.

(Testimony of George W. Young.)

Q. Are you using any water?      A. No, sir.

Q. Have you used any this year?

A. No, sir. [285]

COURT.—Now, that is not the dam that Mr. Young is cited here for.

Mr. WEBSTER.—Yes, it is.

COURT.—The new dam?

Mr. WEBSTER.—Yes.

Q. Now, that dam is constructed just as the other dams are, with this skeleton framework against which are placed movable boards, is it?

A. Yes, sir.

Q. That we have had described in these cases, so many times?

A. They are all practically the same along there.

Q. You say that you have made no use of that dam this year at all?      A. No, sir.

Q. Have you made any use of the dam since you were brought here before, on those contempt charges?      A. No, sir, none whatever.

Q. And at that time it was shown there were some boards had floated down against the framework?

A. Yes.

Q. Did you take those out?      A. Yes, sir.

Q. And have they been kept out as far as you know?

A. Yes, as far as I know, they have been kept out.

Q. At all events, you took those boards out that were shown to have been in there, at the time you were here before?      A. Yes, sir.

Q. And then you claimed you didn't put them in,

(Testimony of George W. Young.)

or have anything [286] to do with them getting in? A. No, sir, I did not.

Q. Who else under the decree—or without asking you particularly about the decree—who else took water out of the Young dam, the old Young dam?

A. Why, Voegtly and Hotchkiss, now Thornburg.

Q. Now, that Voegtly property is what Thornburg owns now? A. Yes, sir.

Q. The water came out on which side of the river that irrigated for them? A. On the west side?

Mr. WEBSTER.—That, I may say, was by permission of the decree, if your Honor please. That is all conceded. There is no question about that, is there?

Mr. TREADWELL.—Not at all as to the old dam.

Mr. WEBSTER.—Yes, I am talking about the old dam.

Q. Where is that ditch? You haven't got the ditch here, have you? A. Which ditch?

Q. Out of the old dam?

A. The Voegtly and Hotchkiss ditch?

Q. Yes. A. Yes, that is right—

COURT.—The old dam?

A. It is above the old dam. That is the ditch right there, showing where it leaves the river north of the the road there, leading out; it leads out to the corner of Mr. Hotchkiss' place, and then runs south across the road, and along the south side of the road to the west.

Q. Now, where, with reference to the new dam, did the ditch leave the river?



(Testimony of George W. Young.)

A. Right where it does now. [287]

Q. Well, but where, with reference to the new dam, above the new dam or below the new dam?

A. Below.

Q. How far below?

A. Well, right immediately below.

Q. Now, that is where it always left the river?

A. Yes.

Q. That is where it was when the decree was rendered? A. Yes, sir.

Q. Very well. That is the ditch which carries the water to the Voegtly property and the Hotchkiss property?

A. To the Voegtly and the Hotchkiss property, both.

Q. Now, since your dam has been so out of repair as to be of no practical use, has Mr. Hotchkiss cut another ditch, connected with that one?

A. Yes.

Q. Show the Judge where that one is, if you please?

A. That is a little cut right in there. It runs from that point there right above the dam.

COURT.—Right above the dam?

A. Yes.

Q. Runs from just above the Hanley—

A. Runs from just above the dam down into the old ditch. It is probably 30 feet away.

Q. How wide is it?

A. It is about three feet, I should judge.

Q. And that connects the Hotchkiss ditch, the old

(Testimony of George W. Young.)

Hotchkiss ditch, with the new dam above there?

A. Yes.

Q. Was that there while the old dam was in operation? A. No.

Q. You are acquainted with both those dams?

A. Yes, sir. [288]

Q. The old dam and the new one? A. Yes, sir.

Q. Now, are there any boards in the new dam? I mean boards in the sense of removable boards?

A. Not a one.

Q. Is there a board in it across the stream, as a part of the structure of the dam itself? A. Yes.

Q. Tell the Judge about that, if you please.

A. Well, it is a board that forms the permanent portion of the dam. It is nailed on to the dam for the purpose of holding and retaining any soil or gravel that might be placed above, in order to keep the water from washing under, and it is part of the permanent structure.

COURT.—What is the width of that board extending above the floor of the structure?

A. It is about, I judge—I think it is 15 inches.

Q. Now, is there a floor in the dam upon which this is constructed?

A. There is no board floor at all. It is a rock floor.

Q. It is a rock floor. And is this board that you speak of, nailed above here, or below?

A. Yes, it is nailed above on the upper side. It is nailed against some timbers that the removable boards rest against. These timbers stand at an angle of about 45 degrees down the river, and this

(Testimony of George W. Young.)

board is nailed right on to the foot of those timbers, and it probably raises the water above the main structure, about eight inches, I should judge, taking in the slope of the timbers.

Q. And is that the way that dams of that character are constructed there?

A. All of them, practically all of them in the river.

Q. Is that a necessary part of the structure, to keep the dam in [289] there? A. It is.

Q. Referring now to the old dam, did that have the same sort of construction as this? A. Yes.

Q. How was the height of the old Young dam there, with reference to the height of this new dam up here?

A. Well, the height of the old dam, the permanent boards, were about 30 inches above the floor. The timbers of the old dam stood up pretty straight—at a more sharper angle—and those boards were nailed on to those timbers, and there was gravel filled in, above the old dam, right up to the top, in order to keep it from washing out. It had washed out a number of times, and Mr. Hotchkiss and I hauled gravel and put in above the boards, long before the decree was rendered.

Q. Was that the condition of the old dam at the time the decree was rendered in 1901?

A. Yes, sir.

Q. Now, is there much fall in the river there, Mr. Young? A. Very little.

Q. Now, speaking of this as you know it from your intimate knowledge and acquaintance with it,

(Testimony of George W. Young.)

if the old dam was in there, and the new one was out, and the old dam was open, would the water then, up above the new dam, and at the head of this ditch, be as high as it is, with the new dam in and open, or wouldn't it be? How would it be?

A. Yes, it would be as high, fully as high.

Q. So that, eliminating the new dam entirely now, there would be then, as much water flowing to the Hotchkiss ditch with the old dam in, and the new one out, as there is with the new one in, is that right?

[290] A. Yes, sir.

Q. I want to get that straight. Now, what is there about this water running down a public road—or whether a public road, or a private road, I don't care anything about that—this water that runs in the Hotchkiss ditch?

A. Well, that is a private road that I constructed—Mr. Smith and I constructed, to get out from our places. The soil is thrown up in the middle, and the excavations have been made on both sides from the Hotchkiss corner west, all along the Hotchkiss property. From the river to the Hotchkiss corner, the soil was taken from the north side and thrown towards the center. That formed the ditch. That road was built before the suit was begun, before any decree was rendered. It is practically in the same condition now as it was then.

Q. Mr. Young, do you know a dam known as the Voegtly dam? Let us get that pointed out, if you do.

A. Yes, sir, that is the old dam in the southeast

(Testimony of George W. Young.)

quarter of the southwest quarter, of section 30, just north of the section line.

Q. Do you know anything about whether that dam has been used, or not?

A. Been used every year.

Q. Well, every year when? Right along all the time.

A. Every year, right along since the dam was built.

Q. Well, do you know anything about the new dam that is being built in there? A. Yes.

Q. Have you seen that? A. Yes, sir.

Q. However, you haven't anything personally to do with it, have you? A. No, sir. [231]

Mr. WEBSTER.—We might as well keep that understood here.

COURT.—What time of the year was that dam used, the Voegtly dam?

A. The old Voegtly dam?

COURT.—Yes.

A. Well, it was used between the 12th of May and the 1st of July.

COURT.—That is the only time you used it?

A. That was all.

COURT.—Not prior to that time?

A. No.

Mr. ERSKINE WOOD.—I don't think he used it at all.

Mr. WEBSTER.—He didn't use it at all, your Honor.

COURT.—I didn't ask him if he was using it. I

(Testimony of George W. Young.)

asked him when it was used. I didn't ask him whether he used it or not.

Q. Do you know how wide the opening through which the river flows in the old dam was?

A. It is  $23\frac{1}{2}$  feet.

Q. And where is this new dam that is being constructed with reference to the old one?

A. It is about 50 or 60 feet above the old one, I should judge.

Q. What is the nature of the river there, with reference to width? Is it as wide or wider than below or above?

A. Well, it is wider, quite a good deal wider.

Q. What about the current?

A. Well, the current is very sluggish there.

Q. Now, in the construction of the old Voegtly dam, were there boards nailed up against it, like there is in the others?

A. Yes, sir, just exactly the same.

Q. How wide is the opening in the new dam that is being constructed [292] there, do you know?

A. It is 15 feet and 8 inches, in the clear.

Q. Is the floor of the new dam as high as the floor of the old one?

A. Yes, the floor of the new dam is higher than the floor in the old dam.

Q. Yes. Well, how about the floor of the new dam and the boards on it, with reference to these boards that were in the old Voegtly dam?

A. Well, they are about the same height. There



(Testimony of George W. Young.)

wasn't very much difference. If anything the old dam would be a trifle the highest.

**[Testimony of George W. Young — Cross-examination (Portions of).]**

Cross-examination.

(Questions by Mr. TREADWELL.)

Mr. Young, when was it you built this new dam?

A. In 1907.

Q. In 1907?      A. Yes.

Q. Was it that year that the old Voegtly and Thornburg ditch was connected up the stream with the river above the dam?

A. With the old ditch?

Q. Yes.      A. No.

Q. How long afterwards?

A. I think it was about seven years.

Q. About seven years when?

A. Since that new dam was built.

COURT.—That would be right recently, then?

A. Yes.

COURT.—1914?

A. Either 1913 or 1914.

Q. Well, it was before the other contempt proceeding, at any rate, wasn't it?

A. No. No, it was afterwards. Before the contempt proceeding in my case? [293]

Q. Yes.      A. No, it was afterwards.

Q. So you mean that even after that, Mr. Thornburg went in there and Mr. Hotchkiss, and dug a ditch, from the river above your dam, and brought it down, and connected it with the old ditch?

(Testimony of George W. Young.)

A. Mr. Hotchkiss dug the ditch, connecting with the old ditch, in 1913, I think, above this dam.

Q. Mr. Thornburg, too?

A. I don't know whether Thornburg had any interest in it or not. I think not.

Q. When was the stop-gate put across the old ditch? To keep the water from running back into the river from the old ditch.

A. That stop-gate has been maintained there always.

Q. So it originally was the headgate to take water in, was it? A. It was.

Q. And now it is used as a stop-gate to prevent the water from running out of the ditch back into the river.

A. No, sir, that stop-gate, the boards were taken out of there. They were used this spring.

COURT.—What do you mean by stop-gate? What is it?

A. Well, there is a headgate right in the head of the old Hotchkiss ditch, that has been put in there since the decree, and has been used for the purpose of preventing the water from getting onto Mr. Hotchkiss land a number of times in the summer; and also when the flood waters run out of the banks of the river above this section line, they drop down into Mr. Hotchkiss' ditch and that headgate is used, sometimes, to prevent a surplus.

Q. To prevent a surplus in which way? To shut it from coming out of the river?

A. Yes, from coming out of the river.

(Testimony of George W. Young.)

Q. But now, at the present time, the water is running out of the river above this dam? [294]

A. Yes.

Q. And running through this new ditch into the old ditch? Yes.

Q. And it is prevented from running back to the river, by this stop-gate, across the old ditch, isn't it?

A. Yes, a good portion of it.

Q. The water in that ditch is a couple of feet higher than the water in the river?

A. No, it is not.

Q. Well, a foot higher? A. No, sir.

Q. How much higher would you put it? Did you measure it?

A. The water in the floor of that headgate is actually lower than the water in the river.

Q. It is?

A. Yes, sir, if that dirt was cleared away from the head of that.

Q. But isn't the water in that ditch standing up against that headgate a foot deep or so?

A. About—I should judge about 12 inches.

Q. If the headgate was taken out, the water would run right back into the river?

A. Some of it, yes.

Q. Now, then, beside that—to be just with these other people—I want to know when they made this connection. Did they make it before this contempt proceeding, or afterwards, in your best judgment?

A. Afterwards.

Q. Now, then, at the time you constructed the

(Testimony of George W. Young.)

dam, or at some later time, did you also construct from above the dam a flume connecting with the river?

Mr. WEBSTER.—Objected to. He is not charged with anything of that sort here. That was all brought forward in the other case, [295] and they didn't hold him for the flume at all.

Mr. TREADWELL.—They didn't? He certainly has been held.

Mr. WEBSTER.—That has nothing to do in this case. That is not charged against this man now.

Mr. WOOD.—It is not in the information.

Mr. TREADWELL.—I am not charging him with taking any water through that flume this year, because I don't think he has taken any water through the flume this year. But I am showing he did construct new works there, and he has not removed any of them, including that flume.

COURT.—Was that flume in the preceding case?

Mr. TREADWELL.—Yes.

COURT.—It was a matter of consideration of the Court?

Mr. TREADWELL.—Yes.

COURT.—Then how is it in this case?

Mr. TREADWELL.—I will not insist on it.

Q. You also at the time you constructed this dam, had a ditch leading out on the east side, did you, to the east of your property?

A. I had a ditch running almost to the river, from the east side. It didn't connect with the river on my place at all, the new ditch.

(Testimony of George W. Young.)

Q. Didn't connect with the river at all?

A. Mine.

Q. That was a new ditch. When did you construct it?

Mr. WEBSTER.—That I object to, too. That is not in this case. No charge against this man for building any ditch there at all. Here is the charge against this man: “That by the terms of the said decree, the defendant George W. Young, and the defendants Hull Hotchkiss and C. H. Voegtly, were permitted to maintain one dam in the west fork of Silvies River, which [296] was then situated in the NE  $\frac{1}{4}$  of section 30, township 233 south, range 31 east, about a quarter of a mile south of the north line of the said section 30, together with the ditches connected therewith, and were permitted to close and use the said dam from the 12th day of May, to the 1st day of July, each year, and at no other times, and were enjoined and restrained from maintaining any other dam in the said river; that notwithstanding the premises, several years ago, the said dam was washed out, and thereupon the said defendant, George W. Young, and the said Hull Hotchkiss, and the said Carey Thornburg, in violation and contempt of the terms of the said decree, constructed a new dam about a quarter of a mile upstream, from the location of the said dam, permitted by said decree, and constructed the same with a permanent board across the floor thereof, which raised the water in said stream at all times about a foot and a quarter, and have ever since maintained the said dam and

(Testimony of George W. Young.)

have also constructed a new ditch taken out of the said river above the said dam, and leading onto the lands of the said Young, Hotchkiss and Thornburg,” —that is this little ditch that we have talked about here,—“And during the month of April, 1915, the said defendants by means of the said dam and ditch, diverted water into the same for a long period of time, in excess of two cubic feet per second, and carried the same away from the said river, and to the said lands; that at the time aforesaid, the water in the said river would not naturally flow into the head of the old ditch on said property; but the bottom of the said old ditch was almost two feet above the water naturally flowing in the said river when unobstructed by said new dam, and all of the said water was diverted by reason of the said [297] new dam and in violation of the terms and provisions of the said decree, and the said water has been permitted by the said defendants to flow down a large ditch, 12 feet in width, on two sides of the county road, and there to stand, and seep into, and upon their lands, and to flow over the same. And in all the acts aforesaid, the said defendants have been acting under the advice and encouragement, and with the assistance of the said defendant William Hanley; that heretofore, this Honorable Court adjudged that the said defendant, George W. Young, had violated the terms of the said decree by constructing the dam aforesaid, but was permitted by this Honorable Court to purge himself of contempt by paying the costs of said contempt proceedings and by removing the said dam, but the



(Testimony of George W. Young.)

said defendant Young has not purged himself of said contempt, and has not paid the costs of said proceedings or removed the said dam, but in continued violation of the said decree, and in wilful contempt thereof has continued to maintain the said dam and ditches aforesaid." I may say right here, since I have read that, now, that the order does not require him to remove the dam at all. There is no order of this court requiring him to remove that dam.

COURT.—That is the new dam they are talking about?

Mr. WEBSTER.—Yes. He was required to remove the boards out of it. He went back and took them out.

Mr. TREADWELL.—We don't want to discuss that, your Honor. What I want to get at is: Each one of these witnesses here on the stand—we don't want to call them two or three times,—Mr. Hanley has testified about his connection with this; I want to find out as to the use of this ditch by Mr. Hanley, as well as by the other defendants. [298]

COURT.—Very well; go ahead with that.

Q. You did construct a new ditch along your north line? A. Yes, sir.

Q. After you built this ditch, did you connect that with the river above this dam? A. No, sir.

Q. Who connected it?

A. That was done at the instance of Mr. Hanley, I think. The man that done the work, at least, told me so, that he was paid by Hanley.

COURT.—Where is that new ditch connected?

(Testimony of George W. Young.)

A. That connects above the Hanley dam, and drops into this ditch below the head.

Q. And runs into your ditch, does it?      A. Yes.

Q. You say you had nothing to do with that?

A. No, sir.

Q. Didn't you tell Mr. Gilcrest and I, that that was your ditch, and you wouldn't let Mr. Hanley or anybody else use it?

Mr. WEBSTER.—To that we object. I have no objection—I have no objection to him testifying anything about Mr. Hanley, but I do object, your Honor, to him now charging this man in this way with the construction of that ditch, or with allowing somebody to use it. There is no such charge against him here at all.

COURT.—The question asked now goes to the witness' credibility. I will permit that testimony.

Mr. WEBSTER.—Very well. As long as we understand it is not making a specific charge about that.

Q. Go ahead and answer the question.

A. What was the question?

Q. Didn't you tell Mr. Gilcrest and I when we were there on [299] your property Sunday, that that was your ditch, and that you would not let Mr. Hanley use it?

A. I told you that the ditch running south of the fence belonged to me, and that I was not permitted to let Mr. Hanley use it.

Q. Did Mr. Hanley this year, or Mr. Hanley's tenant, try to get water through there?

A. No, sir.

(Testimony of George W. Young.)

Q. They did not?      A. No, sir.

Q. Now, how far is this dam from your house?

A. From my house it is about—oh, it ought to be 75 yards.

Q. You have seen this water going out into this ditch along the county road all this summer, have you?      A. Yes.

COURT.—You mean this spring?

Mr. TREADWELL.—Yes. This spring.

A. This spring. [300]

\*      \*      \*      \*      \*      \*      \*      \*

Mr. WEBSTER.—If your Honor please, he confessed that he was using the dam.

A. Yes, that I used the dam.

Q. You did use it, didn't you?

A. Well, I tried to use it.

Q. You intended to use it when you built it?

A. Well, no.

Q. You just built it for your health, I suppose? [301]

A. The dam has been of no practical benefit to me, never was, because it would compel me to use surface irrigation and my irrigation is all a sub-irrigation system.

Q. You built that ditch along your north line, and connected it with this,—along your north line for no purpose?

A. I built that ditch along the north line mostly for a drain ditch and levee, to prevent the water from running off—off section 19, from running down onto me, and destroying my grain crops. That was

(Testimony of George W. Young.)

the practical intention.

Q. You gave Mr. Hanley the privilege of using this dam. How was he going to get the water onto 29?

A. Well, I suppose he was going to construct a ditch from section 19.

Q. You let him go right there, you say, and connect up with your ditch?

A. Well, I was away at the time the connection was made.

Q. You let it stay there; you didn't touch it?

A. No, I haven't interfered with it—bothered with it.

Mr. WOOD.—Are you talking about this proceeding, or the former proceeding?

Mr. TREADWELL.—I am talking about the fact.

Mr. WOOD.—I mean is it in this proceeding?

Mr. TREADWELL.—Is what in this proceeding?

Mr. WOOD.—These questions you are asking about connecting with this ditch, and Hanley taking the water.

Mr. TREADWELL.—I am simply asking him if he permitted it to be done.

Mr. WOOD.—There isn't anything of the kind in the information.

Mr. WEBSTER.—You don't claim that as contempt charge against him, do you? [302]

Mr. TREADWELL.—The whole matter has got to be laid before the Court for the Court to see the whole situation.

COURT.—I think I understand it, about that ditch now.

(Testimony of George W. Young.)

Mr. TREADWELL.—I would like to renew that other question, your Honor now, under the present circumstances.

Q. Besides these things, you also built another flume, or a flume taking out of the river at the same time you built this ditch, did you not?

Mr. WEBSTER.—That we object to. That is not charged in this case; not a word been mentioned on the subject.

COURT.—Where is that flume?

Mr. TREADWELL.—On the west side of the river, taken out above.

COURT.—On the west side, taken out above this new dam?

Mr. TREADWELL.—Yes.

COURT.—You may ask about that.

A. The new flume was built along after this ditch was constructed. The new flume was built to connect an old ditch that I had with the dam, in order to irrigate a little garden plot that I had.

COURT.—On the west?

A. On the west side, yes.

COURT.—Is that being used now?

A. Never has been used. Never was used at all.

COURT.—I think that is enough about that.

Mr. TREADWELL.—That is all. I think that covers everything.

**[Testimony of George W. Young—Redirect Examination (Portions of).]**

Redirect Examination.

Q. Just one other question I would like to ask

(Testimony of George W. Young.)

to make perfectly clear what I deem to be a very important factor. Is there any more water goes out or will go out through the Hotchkiss ditch, [303] by reason of the new dam, than there would be if the old Young dam was kept as it had always been?

A. No.

Q. Then the only effect of this new dam, so far as the Hotchkiss ditches are concerned, is simply to be a substitute for the old dam which went out, or which rotted away—the old Young dam? A. Yes.

COURT.—If that is true, what is the reason that you have that headgate in there to prevent water from running from the Hotchkiss ditch back into the river? A. The headgate?

COURT.—No, below the headgate. I understood you to say a while ago that there was a headgate into the place where the old ditch came out? A. Yes.

COURT.—Before the change?

A. From the head of the ditch?

COURT.—I understood you to say that sometimes that gate was kept in there for the purpose of keeping the water from running from the ditch back into the channel of the river.

A. Sometimes, yes, it is.

COURT.—How do you reconcile that with the fact that you say now the new dam does not raise the water any higher above the new dam, than the old dam raised the water at the same point?

A. Well, the old dam has gone out and doesn't back the water up.

COURT.—I know. Supposing the old dam was



(Testimony of George W. Young.)

there. I understood you to say a while ago, that with the old dam there, it would raise the water practically the same height above the new dam that the new dam raises it now? A. Yes, it would.

[304]

COURT.—Is that a fact?

A. Yes.

Q. In that way the water would run out that old headgate?

A. The old headgate? Run into the old headgate.

Mr. WEBSTER.—Run into the old Hotchkiss ditch.

COURT.—I understand. You went over that a while ago. I didn't know why he should keep the headgate closed in that ditch for the purpose of keeping the water in the ditch from running into the channel below the new dam. I was wondering how that could be reconciled.

Mr. WEBSTER.—The old dam being out, of course lowered the water below. That is all. [305]

\* \* \* \* \*

(Examination by Mr. WEBSTER.)

Q. There is one other question in another case. Do you know where the People's Ditch is?

A. Yes, sir.

Q. And do you know where their headgate is?

A. Yes, sir.

Q. Do you know anything about the condition of that headgate along in March or April, along in April when you were there, or were you there in April?

A. Yes, I was there in April.

(Testimony of George W. Young.)

Q. What was the condition of it then?

A. It was closed up.

Q. How late in April do you remember you were along there?     A. I think it was on the 17th.

Q. Had you been along there before—different times?

A. Yes. Not at the headgate. I had crossed the ditch.

Q. Was there any water in the ditch you could tell?

A. Yes, there was some water in the ditch. [306]

Q. That was when—in March?

A. That was in April.

Q. In April?     A. Yes.

Q. When was it you saw the headgate?

A. About the 17th, I think.

Q. That was closed then?

A. Yes, it was closed.

[Testimony of George W. Young—Recross-examination.]

Recross-examination.

Q. When was it you saw the water in the ditch?

A. About the 15th or 16th, along the same date. I was backwards and forwards there, two or three days. ,

Q. You don't know who opened that ditch?

A. No, I do not.

Q. Why do you shake your head in that way if you do know?     A. Well, I don't know, no.

Q. You have a pretty good idea, then, I think?

(Testimony of George W. Young.)

A. As to who opened the ditch?

Q. Yes.      A. No, sir.

Q. You don't know anything about it?

A. No, I don't know anything about it at all.

Witness excused. [307]

\*      \*      \*      \*      \*      \*      \*      \*

**[Testimony of Hull Hotchkiss — Direct Examination.]**

HULL HOTCHKISS, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

**Direct Examination.**

(Questions by Mr. WEBSTER.)

Q. Do you live in Harney County?

A. Yes, sir.

Q. Have lived there for a good many years?

A. Yes, sir.

Q. Your business is that of farmer and stock raiser?

A. Yes, sir.

Q. Are you acquainted with the Young ditch, that Mr. Young has testified about?      A. Yes, sir.

Q. You have heard that testimony here in the courtroom?      A. Yes.

Q. Are you the Hotchkiss mentioned in that testimony, as having an interest with Mr. Thornburg in the ditch which leads from the river on the west side?

A. I am.

Q. That was formerly to serve what was known as your property and the Voegtly property, wasn't it?      A. Yes, sir.

(Testimony of Hull Hotchkiss.)

Q. That ditch was there at the time the decree in 1901, the original decree in this case, was rendered?

A. Yes, sir.

Q. At that time was there a dam in the river?

A. Yes, sir.

Q. Where was that dam, Mr. Hotchkiss?

A. That dam was down about—somewheres down about 300 yards south of the north line of section 30.

Q. You have been acquainted with that dam for how long?

A. Ever since it has been put in. In fact, I helped put it in. [311]

Q. You have lived there how long? How long have you lived there?

A. Going on 28 years.

Q. How long have you lived upon land where you have used the water from what is known as the Hotchkiss ditch? A. 25 years.

Q. You helped build the old Young dam, or the Young dam?

A. I helped build that, before I became owner of this land.

Q. In the construction of that Young dam, were there boards across the front of it which were a part of the permanent structure? A. Yes, sir.

Q. How high were those boards?

A. Well, there were three-inch boards put in, and the slope, I suppose would make them about 30 inches, something like that.

Q. They were put, the pieces running upright—or

(Testimony of Hull Hotchkiss.)

rather, the pieces of the bridge against which the movable boards will stand, on a slant? A. Yes.

Q. These boards were nailed at the bottom just as the movable boards would be if they went on down?

A. Yes.

Q. There were three 12-inch boards on that slant?

A. Yes.

COURT.—That is the old dam you are talking about?

Mr. WEBSTER.—That is the old dam, if your Honor please.

Q. When the boards were out of the old dam, what would be the condition of the water in the river at the head of your ditch there?

A. I would be getting a good head of water out at the present time.

Q. If the old Young dam was there, as it always had been?

A. As it was maintained before the decree. [312]

Q. At the time when that decree was rendered, how was the water carried down in the ditch to your property? What kind of a ditch was it, compared with what it is now?

A. Well, that ditch there then was about ten foot wide, and we afterwards put that headgate in; that narrowed it down to three-foot four in width, and it is about three and a half feet deep.

Q. Well, leaving the headgate, going down the ditch along the road there, what is the condition of the ditch now in respect to what it was at the time the decree was rendered?

(Testimony of Hull Hotchkiss.)

A. Well, that there road has been throwed up—no, the road was throwed up before this decree—but we get the water just the same. It don't help me a bit in the world.

Q. Nor hurt you? \_\_\_\_\_

A. No, neither helps nor hurts.

Q. Well, does it result in any greater waste of water coming down there than it did before the decree was rendered? A. No, it does not.

Q. This water comes to you and from you on down to the Voegtly place, doesn't it? A. Yes.

Q. Well, what is the condition of that old Young dam now?

A. Well, there ain't but very little left of it.

Q. It is no obstruction to the water at all?

A. Not a bit.

Q. Nor has no use as a dam?

A. Has no use as a dam at all.

Q. Hasn't been used for how long?

A. I don't think it has been used for the last seven or eight years.

Q. Do you know of another dam that has been constructed up just north of the section line of 30?

A. Yes, sir. [313]

COURT.—You say the old dam has not been used for when?

A. For seven or eight years. ,

Q. And you are acquainted with that new dam?

A. Yes, sir.

Q. How high is the board across the front of that



(Testimony of Hull Hotchkiss.)

dam constituting a part of the permanent structure?

A, Well, it would be right around a foot, I think, I never measured it.

COURT.—Let me inquire. In the Young case, I understand that new dam was in litigation; that is to say, the construction of it and the boards in it. What judgment was entered in that case as to that new dam?

Mr. WEBSTER.—There wasn't any. Mr. Young was required to remove the boards. That is all.

COURT.—Clear down to the floor?

Mr. WEBSTER.—No. The evidence showed there were some boards there floated in, some movable boards had either floated in or he put them in. The evidence showed that when he took the boards out that he had had the removable boards in there, and that when he took them out, he didn't take them all out, but he took out what he claimed was enough to allow the free flow of the river. The Judge said that was not enough; he had to take them all out.

COURT.—He had to take them all out down to this permanent board?

Mr. WEBSTER.—Yes.

COURT.—Is that your understanding?

Mr. TREADWELL.—I think Judge Webster is correct in stating he was cited for contempt for diverting the water, having the boards in to divert the water. At that time it developed that we didn't know [314] that this new dam had been constructed. In drawing our affidavit, we simply as-

(Testimony of Hull Hotchkiss.)

sumed from the report that the boards were in, that it was the same as the old Young dam. On the hearing, it then developed that it was a new dam that they had constructed. And it was then shown the circumstances under which it had been constructed, and the Court held, in the way of an opinion, that not only had they violated the decree, by putting the boards in and using it, but that also the whole thing was in violation of the decree and he was told that he could purge himself of the contempt by paying the costs and only obstructing the river in the way he had done before, namely by the old dam.

Mr. WEBSTER.—We will discuss that when we come to the argument.

COURT.—Yes, I was wondering whether we were relitigating an old subject.

Mr. TREADWELL.—We certainly are, your Honor. He was required to remove that dam, according to my contention.

Mr. MINOR.—I have the opinion.

Mr. WEBSTER.—I will read it if your Honor wants to hear it. This man was never cited for any contempt for building that dam.

Mr. TREADWELL.—No, but he is cited now.

Mr. WEBSTER.—Yes, he certainly is. He knows that. He has a suspicion of that kind.

Q. Now, Mr. Hotchkiss, if you took the new dam out, and put the old Young dam back in, with the removable boards all out, what would be the condition of the river, as to the height of the river then, up

(Testimony of Hull Hotchkiss.)

above where the new dam is, where the new dam is now?

A. It would be up about on a level with where the new dam is now, where the water stands. There is practically no fall there, from the new dam down to the old dam. That water stands practically [315] dead.

COURT.—How much water do you claim you were entitled to through the Hotchkiss ditch?

A. Sufficient to irrigate that land. There is no amount specified.

COURT.—How much land have you got there?

A. I have a quarter section.

Mr. WEBSTER.—When the dams are open, the decree gives them the right to all water naturally flowing in the ditches.

Q. After the old dam rotted out, and the new dam was put in, you constructed a short ditch from above the new dam connecting with your ditch system, didn't you?      A. Yes, sir.

Q. And I want you to tell the Court whether, with that construction all open and the new dam open you get any more water in your ditches than you would in the old way as it was when the decree was originally rendered?      A. I do not.

Q. Do you get any more water—will you get any more water with the boards in the dam, through your system than you would with the use of the old dam as it was at the time the decree was rendered?

A. No.

(Testimony of Hull Hotchkiss.)

COURT.—What period of time were you entitled to use that water?

A. Well, the water that would flow out of the ditches without any obstruction, it could come out any time, but we put the boards out the 12th of May.

COURT.—That is, to divert the water?

A. Yes, so as to divert the water.

COURT.—You put the boards in so as to divert the water, the 12th of May? [316]

A. Yes, sir.

COURT.—But you are not entitled to have the water come out of there before that time?

A. My understanding is we are, such water as will naturally flow.

Mr. WEBSTER.—Such water as will come without the boards being in?

COURT.—Without any obstruction in the river.

A. Yes.

Mr. WEBSTER.—Without the boards being in the dam, with the dams open, they are entitled to the flow in their ditches.

COURT.—Then I understand you, without the boards being in the dam, the water is diverted above your dam now, out into the Hotchkiss ditch?

A. I didn't quite understand that.

COURT.—I asked you, without the boards being in the new dam, any of the boards being in the new dam, and in the situation the dam is in, at the present time, the water is diverted out into your ditch?

A. Yes.

(Testimony of Hull Hotchkiss.)

COURT.—And the diversion comes through the connection that you have made from your ditch to the channel of the stream?     A. Yes.

Q. And if the new dam was all out, and the old Young dam was in, and open, would the water then flow into your ditch?

A. It would be practically the same.

Q. The same as it does now?     A. Yes.

Q. So that the only difference is that the water is coming out of the river into your ditches a few feet above what it would if the old Young dam was in as it was at the time of the decree?     A. Yes.

COURT.—Did you have a survey made and levels taken at the [317] time you constructed the new dam, to ascertain whether or not you were raising the water any higher than the old dam raised it?

A. I never had anything to do about building the new dam. I hadn't a thing in the world to do with it.

Q. That was built by Mr. Young and Mr. Hanley?

A. I don't know who it was originally built by.

Mr. WEBSTER.—There are several other charges, different places, against this defendant. What other one?

Mr. TREADWELL.—A new dam.

Mr. WEBSTER.—You charge him with the new Voegtly dam?

Mr. TREADWELL.—No, I guess not. I guess this is the only place he is charged.

Mr. WEBSTER.—You had his name in a time or two?

(Testimony of Hull Hotchkiss.)

Mr. TREADWELL.—That was by mistake, and it was stricken out.

Mr. WOOD.—He is in twice, though.

Mr. TREADWELL.—He is charged with the new dam, the new Voegtly dam.

Mr. WEBSTER.—Is he?

Mr. TREADWELL.—Page 6 of the affidavit.

Mr. ERSKINE WOOD.—He is charged with Thornburgh with putting hay and manure in the old Voegtly dam.

Q. Do you know the old Voegtly dam, Mr. Hotchkiss?     A. Yes, sir.

Q. And do you know about the new dam that is being constructed there?     A. Yes, sir.

Q. Have you any interest in those properties, any of them?     A. No, sir.

Q. Well, have you had anything to do with the construction of them, and if you have, tell the Court what it is.

A. I never have had anything to do with them.  
[318]

Q. Nothing at all?     A. Nothing at all.

Q. Never helped build them?

A. I did help build the old one, but I was working for Mr. Voegtly at the time.

Q. When was that?

A. That was in the fall of 1895.

Q. Oh, yes. I guess they don't go that far back. Have you been hauling manure and putting it down there?     A. No, sir.



(Testimony of Hull Hotchkiss.)

Q. Or stack bottom, or anything?      A. No, sir.

Q. Had anything to do with it?

A. Not a thing.

Q. Last year, or this time, or any year?

A. At no time—no time whatever; never have had anything to do with it.

Mr. WOOD.—I would like to ask you a question. You don't seem to have done anything, but I want to know whether Mr. Hanley aided or abetted you in doing it?      A. No.

Mr. WOOD.—Ever have any talk about your doing it, about your irrigation?      A. No.

Q. You know the Voegtly dam, you say?

A. Yes.

Q. Do you know whether it has been used, or not, the last several years?

A. It has been used continuously since 1895.

COURT.—At what time in the year?

A. Well, I think from the 12th of May till the 1st of July. That I would not be positive of.

**[Testimony of Hull Hotchkiss—Cross-examination.]**

Cross-examination.

(Questions by Mr. TREADWELL.)

Just one or two questions. When did [319] you put in the ditch from the new Young dam that connects with your old ditch?

A. I think this will be the second year. I would like to state to the Court that that was put in just temporarily till we put in our own dam.

Q. You intend to put in another dam, do you?

(Testimony of Hull Hotchkiss.)

A. We intend to put in a dam where the old dam stood.

Q. Is Mr. Young going to join with you in that, too?      A. Yes.

Q. So that is the program, is it?      A. Yes, sir.

COURT.—You are going to tear out the new dam?

A. I have nothing to do with it.

Q. When did you open the ditch this year?

A. I took the board out of the headgate there, I think along about the 1st of March, if I remember right.

Q. There really is not any headgate in your ditch, is there?      A. There sure is.

Q. Well, I wasn't sure. Is there a headgate in it?

A. Yes.

Q. A wooden structure?      A. Yes, sir.

Q. You took the boards out?

A. I took one board out—the top board. There is four eight-inch boards in there.

Q. The 1st of March?

A. Along about that time.

Q. And had water there ever since?      A. Yes.

Q. That stands on both sides of the county road, don't it?      A. Yes.

Q. And about 16 feet wide across the surface, isn't it, the water?      A. I guess it is, yes.

Q. How deep do you suppose you keep it standing there along that road? How deep is that hole down there?

A. Well, in the lowest place—in that lowest place in 19, some [320] place along around a foot.

(Testimony of Hull Hotchkiss.)

Q. Only a foot deep?

A. I mean on the level ground, right on the meadow.

Q. That is not what I am talking about. I am talking about in these two ditches along the road, where it is 16 feet wide, how deep is it?

A. Right there, I suppose it would be right around two feet.

Q. Isn't it a fact that you keep it up so high there, that it has backed out onto Mr. Hanley's section 19?

A. It backs up onto 19.

Q. Does that belong to Mr. Hanley's company?

A. Yes.

Q. Backs right up there on it, subirrigates it, in fact irrigates the surface of it?

A. It irrigates part of it.

Q. You keep the bank up in your land—you have it banked up along your property all along the road, haven't you?

A. Yes, I have. There is several cuts there.

Q. Instead of letting it flow freely, onto your property, you keep it banked up, and hold it—have a little levee along there, to keep it kind of off your property?

A. You understand about the center of my land, there is a low place that I am obliged to levee up to force it over to the west side.

Q. The west side of what?

A. The west side of my place.

Q. So in order to get it over here, you hold the water up, and levee it up, to force it clear over there,

(Testimony of Hull Hotchkiss.)

and that also backs it up on Mr. Hanley?     A. Yes.

Q. What arrangement have you with Mr. Hanley as to 19?     A. Not a thing.

Q. Which section have you got jointly with Mr. Hanley? [321] Oh, I beg your pardon, I was thinking of Mr. Thornburg, instead of yourself, Mr. Hotchkiss. Then the water, after it runs off you, goes down onto Mr. Thornburg?

A. Yes, goes onto Thornburg.

Q. You have had water there all of March and all of April, this year?     A. I think so.

Q. You are keeping right on having it?

A. Yes, sir, I am.

**[Testimony of Hull Hotchkiss — Redirect Examination.]**

**Redirect Examination.**

Q. When you say you expect to build another dam, you mean to restore the old Young dam, just as it was at the time the decree was made?

A. Yes, sir.

Q. And as the decree permitted?

A. Yes, sir, as the decree permitted.

COURT.—You say you are going to rebuild?

A. All three of us.

COURT.—You and Voegtly?

A. I and Thornburg and Mr. Young.

COURT.—Then as far as you three are concerned, you will abandon the new dam?

A. Why, I never have had anything to do with it.

**[Testimony of Hull Hotchkiss — Recross-examination.]**

**Recross Examination.**

Q. You built your ditch up ahead of it, didn't you, to get the benefit of it?

A. Yes. Well, I get that benefit of it; I will admit that. But it was only till we could get this other dam put in. We don't take any more water.

**Redirect Examination.**

Q. Let me ask again—I am afraid I didn't get it—speaking of the ditches that lead out and the levees that you answered about [322] here, is that in the same condition, or isn't it in the same condition as it was at the time when the decree of 1901 was rendered? A. Yes, sir.

Q. Has stayed that way ever since?

A. Stayed that way ever since.

Witness excused. [323]

**[Testimony of Carey Thornburg—Direct Examination (Portions of).]**

CAREY THORNBURG, a witness called on behalf of the defendants, being first duly sworn, testified as follows.

**Direct Examination.**

(Questions by Mr. WEBSTER.)

You live in Harney County?

A. Yes, sir.

Q. How long have you lived there?

A. I have lived in Harney County about 30 years.

Q. What is your business?

A. I have got a little ranch up there.

(Testimony of Carey Thornburg.)

Q. Whom did you get it of?

A. Charley Voegtly.

Q. When did you buy it?

A. I bought it in the fall of 1900.

Q. Fall of 1900. Got a deed to it then?

A. Yes, sir.

Q. Owned it ever since?      A. Yes, sir.

Q. What is the description of it, do you know?

A. It is meadow land.

Q. I know. I mean the legal subdivisions. Do you know what they are?

A. Well, I don't.

COURT.—What section is it in?

A. In section 30.

Mr. TREADWELL.—It is the southwest quarter of section 30.

A. The southwest quarter of section 30.

COURT.—That would be this quarter here?

A. Yes.

Q. Where do you get, or have you been getting water for irrigation there?

A. From this old Voegtly dam. [324]

Q. Do you get any water from the Hotchkiss ditch?

A. I do when there is a surplus of water turned out above, and all gets mingled together, I get a benefit from the upper part there, from different sources.

Q. Was that the ditch that Mr. Voegtly got his water from—that Hotchkiss ditch?

A. I think he got some water from there, yes.



(Testimony of Carey Thornburg.)

Q. Were you acquainted with the Young dam, the old dam that was in there on George Young's property?

A. Why, that old dam was in action some time after I bought this place, several years, yes.

Q. Are you acquainted with a new dam that has been built up above there on 31? No, not 31.

A. 19.

Q. 19, yes. A. Yes, I have seen it.

Q. Just above the north line of 31. Are you able to tell the Court anything in reference to the relative height of these dams when the boards were out, the old dam and the new dam, as to making obstructions in the flow of the river?

A. Well, I should judge they were about the same on about the same level.

Q. Have you any interest in the new dam?

A. None whatever.

Q. Did you construct the little short ditch that leads from above the new dam into the Hotchkiss ditch?

A. I did not; didn't have a thing to do with it.

Q. That, however, carries water down through a system that does take the water onto you finally?

A. Yes, sir.

Q. Where do you get the most of your water?

A. From the old Voegtly dam; always have.

[325]

Q. You always have got it from there, ever since you have had that place? A. Yes, sir.

Q. How do you get it out from there?

(Testimony of Carey Thornburg.)

A. By putting the boards in and making it overflow the banks in those little natural cuts that are there, and they are all small, but I get the most benefit from subirrigation system along the river there. The banks are high, and it would be impossible to get it from any other source only from that old Voegtly dam.

Q. And you get a subirrigation more than you do the surface irrigation?     A. Yes.

COURT.—That is subirrigation from the river itself?     A. Yes, sir, when the boards are in.

Q. Is there a ditch leading out from that dam to the west there?

A. There is a ditch; yes, there is a ditch from the Voegtly dam.

Q. From the Voegtly dam. I think it is on this little map here.

A. Leading out from that dam above the dam, right here, but it was built more for a drain ditch, from the low grounds on Mr. Smith, and also myself; in high times, it leads this water off, you know. But in irrigation time, I keep that ditch closed up, practically closed up. When I have got the boards in the Voegtly dam, if I didn't, it would run out so much that it would be a damage to me.

Q. Now, before I go further into that Voegtly dam, I want to ask you whether you take from the Voegtly dam, and the little you get from the Hotchkiss ditch—whether you take more water [326] for the irrigation of your land than was formerly taken through the Hotchkiss ditch, and brought

(Testimony of Carey Thornburg.)

around there to irrigate that land?

A. Why, I would have to take out more if I had to abandon this dam.

Q. Do you mean if you abandoned the Voegtly dam, it would take more water brought around by the Hotchkiss ditch, to irrigate your land, than it does the way you do?      A. Yes.

Q. Is that a fact?

A. That is a fact that can be proven right along.

Q. That using the Voegtly dam as you do, you use less water than you would if you brought the water around through the Hotchkiss ditch?

A. Yes, sir.

Q. I believe you are now building a new dam there above the Voegtly dam?      A. Yes, sir.

Q. Who is doing that?      A. I am.

Q. You employed Mr. Smith and these other people to work on it, did you?      A. Yes, sir.

Q. What is that being built for?

A. To take the place of this old dam; that is immediately above to take the place of this old dam.

Q. The old Voegtly dam is worn out?

A. Yes, it has washed underneath, and impossible to use it any longer.

Q. What is the condition of the river there, with reference to being wide or narrow about this place?

A. It is wider there than most any place along that river, above [327] or below either.

Q. How far above the old dam is the new one?

A. Oh, about 50 feet, I should judge. I never measured it.

(Testimony of Carey Thornburg.)

Q. What is the channel, or what is the flow of the river there? Is it rapid or sluggish, or what?

A. No, it is sluggish—slow.

Q. Almost no channel at all? I mean almost no flow at all there?

A. There is scarcely any flow at all.

Q. What is the opening in the new ditch, the opening for the water to go through?

A. The new dam?

Q. Yes, ditch, I said—the new dam.

A. It is 15 feet, 8 inches, in the clear. We measured it.

Q. Is that enough for the whole of the river to go through there without obstruction?

A. Well, I think it is.

Q. Is the new dam as constructed, when it is open, any greater obstruction to the flow of the river than the old Voegtly dam was, when it was open?

A. I don't think it would be any greater obstruction at that point, because the river is wider there than it is below or above, and this dam is as wide—this dam is as wide as other dams above me.

Q. How is it with reference to Smith's dam?

A. It is wider than the Smith dam.

Q. You mean the opening is wider? A. Yes.

Q. How is it with reference to the dam that has been called the Hanley dam up in section 19?

A. It is wider than that, too, some wider. [328]

COURT.—It is not as wide as the old dam, though?

A. No, it is not as wide as the old dam.

(Testimony of Carey Thornburg.)

COURT.—What is your idea for making that narrower, making the opening narrower in that dam than the old one?

A. Because I thought it would be less expense to keep up that width dam than it would be this wide dam that was put in there clear across the river. I didn't think it was necessary to have it in there so wide, you know. But it would not obstruct the flow of the river a particle; when the water is high enough so that dam will obstruct the flow of the river, it would run out of its banks all along.

Q. This new dam is a more expensive dam to build than the old one anyway, isn't it?

A. Yes, it is.

Q. But it is not so expensive to keep up?

A. Not so expensive to keep up.

Q. How long have you used that old Voegtly dam?

A. I have used it myself 15 years.

Q. Right straight along all the time?

A. Every year.

COURT.—At what time of the year?

A. Why, from the 12th of May till the 1st of July.

Q. How did you come to use it just from the 12th of May till the 1st of July?

A. Well, I suppose that that dam was decreed in the place of the one above, which I have learned since, Voegtly signed up there, instead of where he should sign up for this dam.

Q. You supposed, in other words, this dam was in the decree and it is not, eh? [329]

(Testimony of Carey Thornburg.)

A. That is what I always thought, but I found out different.

Q. When did you get the idea that it was not? When did you learn that that was wrong?

A. Well, since this trouble arose, and we got to looking at it, looking it over.

COURT.—You have had all the water you wanted there, by using that from May 12th on?

A. Yes, sir.

COURT.—And you had all the water prior to May 12th that you wanted to use?

A. From that time on.

COURT.—No, I asked you first, if you had all the water from the use of that dam, from May 12th on to July? A. Yes, sir.

Q. You said you did? A. Yes.

COURT.—Well, now, at the time prior to May 12th running back into March, did you have all the water on there you wanted to use?

A. I never had any at all.

COURT.—Well, you didn't need any?

A. I didn't need any, no. Didn't want any.

COURT.—That is what I wanted to know about.

Q. All this time, now, Mr. Thornburg, tell the Court whether you have been using that dam in good faith, believing that you had a perfect right to use it—whether you do or do not have a perfect right to use it? A. I have.

COURT.—He has only been using it after May 12th.

Mr. TREADWELL.—We deny their right to use



(Testimony of Carey Thornburg.)

it at all, your Honor.

COURT.—Yes, I understand. [330]

Q. Are you acquainted with Mr. Hanley?

A. Yes, sir.

Q. William Hanley—how long have you known him?

A. Oh, I have known him as a neighbor a good while.

Q. Have you any business connection, or business relation with him now?     A. I have.

Q. What is it? Tell just what it is.

A. I am connected with him in this way: I cut hay and stack it, and feed it out by the ton—contract work. That is the only way that I am connected with Mr. Hanley, is by contract, cutting this hay and feeding it out to beef cattle.

Q. On what section do you have?

A. On section 31 and also put the hay up on section 19, right above Young.

Q. All your work is contract work with Hanley?

A. All contract work, the whole thing.

Q. Do you know a dam known as the Luig dam?

A. Yes, sir.

Q. Where is that, with reference to the Voegtly dam, above, or below it? I call it the Luig dam. Is that dam known by another name?

A. I have always heard it called the 31 dam.

Q. Very well, we will call it the 31 dam, if that is more convenient to you, where is that dam with reference to the Voegtly dam?

(Testimony of Carey Thornburg.)

A. It is three-quarters of a mile below the Voegtly dam.

Q. Is that on section 31? A. Yes, sir.

Q. On Mr. Hanley's land? A. Yes, sir.

Q. Did you ever have anything to do with working on that dam? A. Yes, sir.

Q. Whom were you working for?

A. Mr. Hanley.

Q. When was that?

A. Well, I have had the irrigating of that section for the last four years. [331]

Q. Have you interest in the dam yourself?

A. In the Luig dam?

Q. Yes, the 31 dam?

A. None whatever.

\* \* \* \* \*

Mr WOOD.—While you are looking that up, I will ask him a question. State whether you ever conspired with Mr. Hanley or talked with him, laid your heads together, to take out this water, or do any of these things to bother the company?

A. None whatever.

Q. (Mr. Webster) Well, did Hanley ever encourage you to do any of this?

A. No, sir, he never did. [332]

\* \* \* \* \*

**[Testimony of Carey Thornburg—Cross-examination (Portions of).]**

Q. You also say that you have a cropping contract with Mr. Hanley on section 19. You have seen this water this year going out at the new Young dam, and standing along on the road, and being held up there,

(Testimony of Carey Thornburg.)

and flooded back onto section 19, haven't you?

A. Yes, sir.

Q. That is what is irrigating that section, isn't it?

A. No, sir.

Q. It is irrigating a large part of it, isn't it?

A. Irrigating about five acres, I should judge.

Q. Five acres would be your idea?      A. Yes, sir.

Q. You seem to have great faith in subirrigation in that country, haven't you? You say your land can be subirrigated from the river?      A. Yes.

Q. You have seen the water there standing not only up to the surface of the ground in the ditch along section 19, but flooding back over it?

A. I don't call that subirrigation.

Q. You don't?      A. No, I call that back water.

Q. Did you use the old Young dam while it was in?

A. I never used any of it, no; I never had anything to do with the old Young dam.

Q. Well, the Young dam was put in every year, wasn't it, while it was there?      A. Yes.

Q. Did the decree permit you to maintain it, and irrigate your ranch from it—doesn't it?      A. Yes.

[333]

Q. It does irrigate the ranch, doesn't it?

A. A portion of it.

Q. Still you say you did nothing about it at all, never touched it?

A. Mr. Hotchkiss has been handling that ditch. It is along his line there, and he has been handling it just about as he wanted to all the time.

Q. You never touched it at all; never irrigated

(Testimony of Carey Thornburg.)

your land at all from that ditch?

A. What water he turned on there, if there was enough to get down on me, it would benefit me.

Q. You saw there was enough, didn't you, all the time?

A. I wasn't interested in that particularly, because I could get all the water I wanted from the old Voegtly dam. That is the reason I didn't pay any more attention to it.

Q. Did you have anything to do with opening the People's ditch this year?      A. No, sir.

Q. Do you know who opened it?      A. I do not.

Witness excused. [334]

**[Testimony of James Dalton—Direct Examination.]**

JAMES DALTON, a witness called on behalf of the defendants, being first duly sworn, testified as follows.

Direct examination.

(Questions by Mr. WEBSTER.)

You live in Harney County, Mr. Dalton?

A. Yes, sir; I live in Burns, Harney County.

Q. In the town of Burns?      A. Yes, sir.

Q. You have some interest in a ditch out there in that county, not far from the town of Burns, known as the People's ditch, haven't you?      A. Yes, sir.

Q. You own some land under that ditch?

A. Yes, sir.

Q. How much?      A. A quarter section.

Q. You are connected with it in connection with Mr. Hudspeth here, Mr. Robert Hudspeth, who succeeded to his father's interest, I believe?

(Testimony of James Dalton.)

A. Yes, sir.

Q. And with— A. The Kelley heirs.

Q. Yes, the Kelley heirs. I understand that there is a board across the headgate of that ditch, through which, when you are entitled to take the water—which is removed at times when you are entitled to take the water, leaving an opening through which the water goes? Is that right? A. It is, yes.

Q. About what is the size of that, do you know?

A. No, I don't know the exact size. It was figured out to open a space to let that amount of water go through, which we were entitled to and no more.  
[335]

Q. Through that opening that would be made by the removing of that board? A. Yes, sir.

Q. Was there a board nailed on, or fastened on there last year, after the irrigating season?

A. Yes, sir, there was.

Q. How do you know that?

A. Well, Mr. Gilcrest came to my store, and told me that my headgate, our headgate was open, and they had no water at the Island ranch, and he wanted it put back, and the boards taken out of the dam. Mr. Hudspeth was taking out a little water from stock water for his hay. And I told him I would go at once, and fix it, take the boards out of the dam; and did go—went and took the boards out of the dam, let them float down the river. In the meantime, before I started, I hired a man with a team—I didn't know what shape it was in,—and gave him some tools, and nails, etc., and started him down to the dam. It is

(Testimony of James Dalton.)

about five miles from town, and Dr. Geary, one of the Kelley heirs (or his wife, rather), he took his automobile and we went down in his automobile and got there first, and took the boards out of the dam, and let them float down the river. By that time the man came. He put the board back, nailed it in solid and tight with big nails. That was the last time I was there.

Q. That is what I want to get at. What I want to get at, is about putting this particulaar board in the headgate. A. He put it back there.

Q. Who put it back?

A. The man that I sent down there. [336]

Q. Were you there when it was done? A. Yes.

Q. Did you see the way it was put back, or how was it—firmly and securely, or insecurely? Tell the Court just how it was.

A. It was put back firmly, nailed with heavy nails; I saw it and superintended it myself.

Q. When was that?

A. I don't know whether it was July or August. It was in haying time.

Q. Last year?

A. I think it was in August, last year.

Q. When was the next thing that you ever heard or knew about the condition of that board across the headgate there?

A. That was on Sunday, the 25th of April of this year, Mr. Treadwell called me up by phone at my home in town, and told me that our headgate, or board in the headgate, was out, and the water was



(Testimony of James Dalton.)

flowing into the ditch, and asked me if I knew it, and why was it so? I told him I didn't know it, and that I would see that it was put back at once. That was four o'clock on Sunday evening. I went right out and saw Mr. Hudspeth, and Mr. Geary, and told them the circumstances. By that time it was almost six o'clock Sunday evening. We went up to the company's office and saw Mr. Treadwell. He was eating his supper. We told him we would go right down first thing Monday morning, and put that board back; and Mr. Hudspeth did go, and put it back—nailed it up solid—and I went down the next day to see if it was in good, and it was.

Q. So that you didn't know anything about the board being out until Mr. Treadwell told you about it, and then you went and put it in? [337]

A. Not a thing on earth about it.

Q. When you put it back in, did you tell Mr. Treadwell or any of the company?

A. Mr. Hudspeth did.

Q. You didn't do that?

A. I didn't go back, no.

COURT.—Did you need the water at that time on your land?

A. Well, the water, of course it would not hurt the land, but I had no reason in the world to believe that I would not get all the water I wanted after that time, when I had the right to put the boards in. I have used the water 28 years on the place, and there never was a year that I didn't get all the water I wanted, without resorting to a legal means to get it.

(Testimony of James Dalton.)

COURT.—Who else gets water out of this ditch?

A. Most of this water, I think, mingled with this other water that came from the Luig dam they speak of—I don't know. I haven't been down there; don't know what water it was; but it got to my place; that is, some water did. I don't know whether it was this water that was in my ditch, or not.

COURT.—I notice there is a little short ditch running out at the head of the People's ditch, running south to the center of the section; would water go down that ditch?

A. No, sir. I don't know how that ditch ever got there. It has never been used. I never saw any water in it. That was there a good many years ago. There has never been any water in that ditch, that I know of. What little hay that I have raised on the place, would not start in to pay me for being brought down here, and defending myself in this court proceeding for contempt. And I certainly would not start in to take the board out, 10 or 15 days before the time when I had every [338] reason to believe that I would get all the water I wanted after that time.

Q. Well, if you had known that you would not have got a drop of water, or a bit of hay, would you have violated the order of this court?

A. I would not. I positively would not. I would rather have gone and bought the hay. It would be much cheaper than to have undertaken to defend myself in this proceeding. I would rather not have had a spear of hay.

(Testimony of James Dalton.)

Q. Do you know Mr. Hanley?

A. I am acquainted with Mr. Hanley, yes, sir.

Q Did he have anything to do with your management of the water, anything to do with this board? You don't seem to have done anything, as Mr. Wood says, but did he have anything to do with your doing it?

A. Mr. Hanley never did in his life speak to me anything about that water in that country, that I know of; never did.

Q. You live in the same county, though?

A. Yes, we live there but he never mentioned to me about the water—the ditch, or the dam, or anything else.

**[Testimony of James Dalton—Cross-examination.]**

Cross-examination.

(Questions by Mr. TREADWELL.)

Mr. Dalton, when were you down on the property, prior to the time you learned of the board being out?

A. Well, it was on Tuesday, I think, Mr. Treadwell, we went down.

Q. Before that?

A. No no. I hadn't been there since they put the board back in July or August. [339]

Q. You hadn't been on your property, then, at all that spring?

A. I hadn't been to the dam. I had been to my ranch last fall.

Q. And hadn't been to your ranch at all this spring?

A. Not this spring. I have an old man on the

(Testimony of James Dalton.)

ranch. He is about 80 years old. He and his sister live there. I just give them a home.

Q. So you hadn't been across the ditch at all?

A. No.

Q. Who took the board out, Mr. Dalton?

A. I couldn't tell you, Mr. Treadwell. That is more than I know. I haven't the least idea.

Q. You haven't been able to get any information on that at all?

A. No, sir, I cannot figure out none whatever.

Q. I think the record shows here, Mr. Dalton, there was one time when there was some trouble between the owners of that ditch and the company, a couple of years ago, was there not? A. Yes, sir.

Q. Outside of that, you have always opened that ditch, at the time you were entitled to, and not before? A. Never took it out before.

Q. And no one else took it out before?

A. Not that I know of.

Q. That is the best of your knowledge, the whole time you have known that ditch?

A. Yes, sir, we never took out all the water that we were allowed to take out.

Q. There is no requirement that you shall, I suppose? A. No.

**[Testimony of James Dalton—Redirect Examination.]**

Redirect Examination.

Q. You were entitled to take water out of there for stock any time of the year, weren't you?

A. Yes, whenever they have water on the Island

(Testimony of James Dalton.)

ranch, the decree [340] provides that we can take water out for stock water.

Q. You can keep on taking water out of there until the water at the Island ranch is reduced to a certain level, and then you will have to quit? A. Yes.

Q. Whenever they notify you. That is all.

Witness excused. [341]

**[Testimony of Robert Hudspeth— Direct Examination.]**

ROBERT HUDSPETH, a witness called on behalf of the defendants, being first duly sworn, testified as follows.

**Direct Examination.**

(Questions by Mr. WEBSTER.)

You live in Harney County, Mr. Hudspeth?

A. Yes, sir.

Q. How long have you lived there?

A. 12 or 13 years.

Q. Do you know Mr. Dalton who just testified?

A. Yes, sir.

Q. And you have an interest in the People's ditch? You know of a ditch and a dam, and the works connected with it?

A. Yes. I have a small interest in it, yes.

Q. Your ranch is irrigated from the waters of that, through the People's ditch, is it? A. Yes.

Q. The same as Mr. Dalton's?

A. Yes. That is supposed to be the source. That is what it was built for, was to irrigate that land. That is my understanding of it.

Q. Do you know anything about this board being

(Testimony of Robert Hudspeth.)

out of the dam that Mr. Dalton testified to?

A. I didn't know it was out, until I was notified that it was out.

Q. Now, were you down there across that ditch on the day that Mr. Dalton spoke about it being out, the day before it was fixed.

A. Why, I crossed the ditch on the same Sunday that Mr. Dalton come to me in town, after I got to town.

Q. Oh, on the same day, was it?

A. Yes, on the same day.

Q. Was that on Sunday?      A. Yes, sir.

Q. How far below where the headgate is was it that you crossed the ditch? [342]

A. Something like 300 yards; probably 350. It was quite a little ways.

Q. What were you doing when you crossed the ditch?

A. I had a team with some hay on the wagon.

Q. Hauling the hay to town?

A. Yes, taking a little hay to town.

Q. You saw the water in the ditch, didn't you?

A. I saw some water in the ditch, yes.

Q. You were therefore advised, or at least apprehensive, that there was some trouble with the headgate that was letting the water in?

A. Well, I really didn't think anything much about it at the time, until my attention was called to it, and then I began to think that it did look like there was a little more water in the ditch than there ought to be there.



(Testimony of Robert Hudspeth.)

Q. You are all the time entitled to some?

A. Yes, we are all the time entitled to some water.

Mr. TREADWELL.—I didn't understand Judge Webster's question, that he can take stock water in the fall. There is no provision that he can take stock water in the first part of the year. He says that the balance of the year he can take it.

Mr. WEBSTER.—That is the balance of the year.

Mr. TREADWELL.—That is not the next year. It says he may use it from the first of May till the first of July for irrigation; for the balance of that year, after that, for stock. It don't give him any for stock for the first part of the year.

Mr. WEBSTER.—When it comes to discussing the question, we will have something to say on that subject.

Mr. TREADWELL.—All right.

Mr. WEBSTER.—I don't think it makes any difference here particularly. [343]

Mr. TREADWELL.—This was being used for irrigation anyhow. So it is not very material.

Q. Now, when you came on to town, then, did you see Mr. Dalton?

A. Yes, I seen him quite a little bit after I come to town, but I heard he was hunting for me before I did see him.

Q. Then you talked about it; he told you that he had been advised the board was out? A. Yes.

Q. What did you do—you and Mr. Dalton?

A. We went up to see Mr. Treadwell.

Q. What did you tell him?

(Testimony of Robert Hudspeth.)

A. I told him I would go down in the morning and fix it.

Q. What did he say?

A. Well, he didn't—he went on to say something about my crossing the ditch that day, and didn't stop to fix it, and I explained to him I had a team and wagon there, and I really didn't notice anything about the ditch and had nothing to fix it with. There had to be some lumber taken down there. If this board was out, or anything had happened there, there had to be something to fix it with.

Q. Was that all the kick he made to you that Sunday evening about it?

A. I believe that is about all I remember, of any consequence.

Q. What did he say when you told him you would go ahead and fix it Monday morning? Did that seem to satisfy him to some extent?

A. He didn't make any kick about it. He didn't object to my fixing it. I don't know as he said it was all right—don't remember whether he did, or not.

Q. What did you do next morning about it?  
[344]

A. The next morning, I took some nails and a board and fixed it up.

Q. You fixed it up yourself? A. Yes, sir.

Q. What time did you get it done?

A. I think perhaps about eight o'clock. I went as early as I could get my breakfast.

Q. How far is that from town?

(Testimony of Robert Hudspeth.)

A. It is four miles on a straight line, and then, from the northwest corner of section 1, over to the dam, that far east. The way I went it would be practically four and a half miles.

Q. Did you notify Mr. Treadwell after you had it fixed?     A. I did.

Q. Did you go and see him that time, or call him up?     A. Yes, I went to see him when I went back to town.

Q. What did he say when you went back to him?

A. I told him I had fixed it. He seemed to think that was all right.

Q. He didn't kick about that at that time?

A. No. We talked a little about this matter there while I was there.

Q. Now, Mr. Hudspeth, did you have anything to do with the removing that board, or having it removed, or anything of the sort?

A. No, sir. I didn't order anybody to remove it.

Q. How long before that had it been that you had been there?

A. Why, it seems to me I couldn't be positive as to dates, but I was there on horseback the same day that this engineer and Tom Johnson, and a man by the name of Corcoran—they three and me—I saw them out there along looking at the dams above there, in Mr. Thornburg's place. And I supposed they were looking around something there, and I thought I would just ride by there and see. And I rode up on the south side of the ditch, up to the headgate, [345] and waited till they came down there. We

(Testimony of Robert Hudspeth.)

stood there and talked. They done some measuring around there.

Q. How long before was that, do you think?

A. Well, I couldn't say. It seems to me it would be about ten days. And I talked to the engineer about it—called attention to it—and we thought it was 10 or 12 days. Of course it possibly might have been longer, or might have been less. I wouldn't be able to say. I took no note of the time, or anything—don't know.

Q. You didn't open this gate?      A. No, sir.

Q. Didn't have anything to do with opening it?

A. No, sir.

Q. Don't countenance anything of that kind—don't want it open?

A. I do not. I don't allow anybody to tamper with that headgate, or do anything with it if I know it. It has been done before—the headgate has been opened before and tore out. One time, I think, three years ago, and when we had the headgate nailed up solid all the season. That was the year in which this trial was down here before, and we didn't attempt to use the dam nor the ditch, either one that year, because the Court ordered that our dam was out of repair—in order to fix this dam and headgate, and comply with the decree.

Q. Do you want to comply with this decree?

A. I do. I certainly do.

Q. Aren't you trying to?

A. Yes. I don't make any pretension to do anything else.

(Testimony of Robert Hudspeth.)

Q. As soon as you are advised, if you are advised anything about it, you get busy and fix it right away, don't you?     A. Yes, sir.

Q. Do you live out there?

A. No, sir, I don't live out there. I am out there the most of [346] the time in the winter; when I am feeding, I am out there in that neighborhood, or past there a good deal, especially in this last year, and I stayed down at the ranch most of the time last winter. But along about the first of March, I quit staying down there, and rode backwards and forwards to feed, horseback.

Q. I think I did ask you—was there any water going through ten days before?

Mr. TREADWELL.—Through the ditch, you mean?

Q. Through the ditch.

A. I don't think there was. There possibly was just what would be leaking through the cracks in the boards. That was all the water was going through at that time.

Q. Do you know Mr. Hanley?     A. Yes, sir.

Q. He lives there in your county, I believe?

A. Yes, sir.

Q. Have you ever had any talk with him about these dams and ditches—a conspiracy or scheming together to beat the company out of its water?

A. Oh, no, no. There was nothing of that kind between us at all.

Q. Has he ever had anything to do with your dam at all?

(Testimony of Robert Hudspeth.)

A. No, sir, I never see him about the dam—don't think I ever saw him about it in my life. But I did tell men at different times that was working for him that I didn't think knew anything about the effects of this decree—I have spoken to them, that they mustn't interfere with that dam or headgate, or with the ditch in any way.

Q. He has nothing to do with managing your property?

A. No, sir, he has nothing in the world to do with any of my property, or I with his. [347]

**[Testimony of Robert Hudspeth—Cross-examination.]**

Cross-examination.

(Questions by Mr. TREADWELL.)

Has he ever had anything to do with this ditch?

A. Mr. Hanley?

Q. Yes.

A. Not that I know of. It is my understanding he has no interest. All I know is what my father told me about this decree, when I came there to take charge of the place 12 years ago.

Q. Between the time you were there ten days or so before the time in question, and the time you went across with the load of hay, did you go across the ditch at all?

A. I possibly might; I don't remember.

Q. You were on the ranch during all that period, were you?

A. No, I was in town most of the time. I was



(Testimony of Robert Hudspeth.)

backward and forward once or twice, but I don't remember.

Q. Whenever you do go backward and forward, you have to go across the ditch?

A. No, I don't necessarily. I have a homestead the other side. I sometimes go around the other side.

Q. Did you see water in the ditch that day?

A. Just a small amount, what would be seeping through.

Q. Nothing else?      A. No.

Q. Where did the water go that went through the ditch? On what land did it go?

A. That water is supposed to go down—did you ever go down that ditch to where it comes to Hotchkiss' place at the east side of 31?

Q. Yes.

A. That is where our ditch turns down to a fence, to our place. [348] When the snow went off, I put in a dam there. So when we did put in water, that is a square turn that the water will go down, to my part of the ditch, you understand.

Q. Where did this water go, as a matter of fact?

A. This water would go down the ditch, naturally.

Q. On to your property?

A. Some of it would, yes.

Q. Do you know where else it went?

A. It would go down the ditch through 5, supposed to go on through these other people's property at irrigating times. But I don't think there was water enough at that time, even going through the ditch

(Testimony of Robert Hudspeth.)

when the board was out—don't think there was enough water reached the premises.

Q. Do you know who took that board out?

A. No, I don't.

Q. You have never been able to learn who took it out at all?     A. No.

Q. Nobody has ever told you that they took it out?

A. No, sir. It has happened before, and I never was able to know who did it.

Q. Whenever you found it was done, you always closed it up?

A. Yes, sir; if it was time that water could go out. Of course if the river was dry, or practically dry, of course, it was unnecessary.

Witness excused. [349]

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Portland, Oregon, May 12, 1915, 10 A. M.

[**Testimony of Henry Luig—Direct Examination.**]

HENRY LUIG, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. WEBSTER.)

Mr. Luig, tell the Court where you live?

A. About six miles from Burns, south.

Q. How long have you lived there, Mr. Luig?

A. Well, I have lived there since about 1884, something like that.

Q. Since 1884. You are not very well this morning—you haven't been very well, have you, since you have been here?     A. No.

(Testimony of Henry Luig.)

Q. Feel pretty bad. Well, we will get through as quick as we can. You have a piece of land there, haven't you?

A. I have a section four miles from Burns.

Q. Four miles from Burns, yes. Now do you know a dam there that is called the Luig dam?

A. Yes, dam on 31.

Mr. WEBSTER.—He succeeded to the rights of Caspar Luig. There is no use asking him about that. There is no question about that. A. Yes.

Q. Have you used that dam this year? A. No.

Q. Have you put any boards in the dam at all?

A. No. I have never been around there.

Q. You never have been around there at all?

A. No.

Q. Have you done anything with the dam, or to get water out of it at all? [354]

A. No, I have never been around the dam.

Q. Nor not used it? A. No.

Q. Nor not sent anybody else to use it? A. No.

Q. Nor you haven't employed anybody to go there and put in the boards? A. No.

Q. Nor told anybody to? A. No.

Mr. WEBSTER.—I think that covers the charge here. Let us see what the affidavit says: "That in and by the terms of the said decree, the defendant Luig was permitted to maintain one dam in Silvies River, in Section 31, Township 23 South, Range 31 East, from the 15th day of May until the 1st day of July, of each year, and not otherwise, and was re-

(Testimony of Henry Luig.)

quired to remove all of the boards from said dam during the balance of said year; that notwithstanding the said decree, and in violation and in contempt thereof, the said Henry Luig, in the month of April, 1915, completely closed the said dam, by putting the boards therein, and by means thereof, obstructed the water in the west fork of Silvies River and backed the water up the channel of the said river, and by means thereof, diverted in excess of 40 cubic feet of water of the said river, and being all of the water of the said west fork, flowing at said dam, except about four second-feet; and that the said defendant, William Hanley, encouraged, advised and assisted Henry Luig."

Q. You say that you did not put any boards in the dam at all? You were not around there? A. No.

Q. Mr. WEBSTER.—Well, that is all, I guess.

Mr. WOOD.—I guess I can't make him hear. I want you to ask him whether he had any conspiracy with Hanley. Hanley [355] admits that he put them in.

Mr. WEBSTER.—Hanley does say he put them in?

Mr. WOOD.—Yes. Now I want to know whether it was by any kind of collusion.

Q. Did you have anything to do with Mr. Hanley putting the boards in there? Did you tell him to put them in or have anything to do with him putting them in? A. No. [356]

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[**Testimony of Henry Luig—Cross-examination**  
**(Portions of).**]

Q. Now, Mr. Luig, ever since you have had charge of the property, you know when you put the boards in. What time of the year?

A. The 15th of April.

Q. The 15th of May, isn't it?

A. The 15th of May,—about there, yes.

Q. Do you ever put the boards in before the 15th of May?     A. Hanley fixed it.

Q. Have you ever put the boards in before the 15th of May?     A. No, I believe not.

Q. Now, before this year, did you let Mr. Hanley put them in before the 15th of May?

A. I wasn't living there. I don't know.

Q. You have lived there ever since 1884, haven't you?     A. No. I live three miles further south.

Q. How long have you lived on Section 6?

A. I can't live there in the spring. It is too wet.

Q. How long have you had that land, I mean?

A. We bought at the same time that Sam Voegtly.

Q. You have had it ever since. You have your house on it?     A. Yes.

Q. You are living there now, aren't you?

A. No.

Q. Where are you living now?

A. Living on Sage Hen three miles from there.

Q. You have a house on Section 6?     A. Yes.

Q. You were there all this spring, weren't you?

A. No, we moved out in March. [358]

Q. You moved out in March? You haven't been

(Testimony of Henry Luig.)

back there at all?

A. Oh, a couple of times, back over there.

Q. Do you know when Mr. Hanley put the boards in the dam this year?     A. No, I don't.

Q. Did you ever let him do that before?

A. I don't know.

Q. Well, did you ever let him do it before this year?     A. No, I didn't.

Q. Well, did he ever do it before this year?

A. No, he never done it.

Q. Did you see the water coming down onto your place after he put the boards in?     A. No.

Q. You have seen the water on your places, haven't you?     A. No.

Q. When these papers were served on you, where were you?     A. I was living on Sage Hen.

Q. Had you been to your place at all?

A. I had been there maybe once or twice.

Q. When were you there?     A. I don't know.

Q. When were you there, Mr. Luig?

A. Maybe about two weeks ago, before I got the papers.

Q. When did you first see the boards in the dam this year?     A. I have never been out there.

Q. You haven't seen them there at all?

A. No, never been around there.

Q. Who is in charge of your property?

A. Oh, before, sometime, I am over there.

Q. Who is in charge of the property during this last month of April? Who was on the property at your house?     A. Nobody.



(Testimony of Henry Luig.)

Q. Nobody there at all?      A. No.

Q. You didn't go near it?      A. No. [359]

Q. Did you go through the property?      A. No.

Q. How did you get down to Sage Hen?

A. Oh, on the county road.

Q. You never went near your property during the whole month of April?      A. No.

Q. Or during the month of March?

A. Oh, I have been maybe once or twice, over there, but I never was much there. I never seen any water. [360]

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**[Testimony of John Ryan, Recalled—Direct Examination.]**

JOHN RYAN, recalled for the defendant.

Direct Examination.

(Questions by Mr. WOOD.)

Mr. Ryan, are you looking after the irrigation of section 5 this year?

A. Yes, sir.

Q. Did you get any instructions from Mr. Hanley, or anyone, to use the People's ditch in doing it?

A. I did not.

Q. Did you ever meddle with the People's head-gate?      A. I don't know where it is.

Q. Well, how is section 5 irrigated?

A. The water—I don't exactly—

COURT.—I think you have been over that.

Mr. WOOD.—I don't want to go beyond the ques-

tion I asked permission to ask.

Mr. MINOR.—I want to go beyond, your Honor.

[**Testimony of John Ryan, Recalled—Cross-Examination.**]

Cross-examination.

(Questions by Mr. MINOR.)

You say you irrigated section 5 this year?

A. What I had, yes.

Q. Where did you get the water?

A. The water comes from the north and—some from the north and some from the east. I don't know where it comes from. I haven't been outside of the section during my work in there. The work has been inside of the section, and using the water that comes.

Q. Some came from the east—is that what you said? A. From the north and from the west.

Q. You said from the east; some came from the north and some [363] from the east.

A. From the north and west.

Q. Where did the water which came from the north come from? A. I don't know.

Q. Where did the water which came from the west come from?

A. I don't know that. As I said, I have not been outside of the section. My work has been inside of the section. I have not been outside of the section line.

Q. Mr. Hanley told you to irrigate, though, did he?

A. To use the water that was in there to irrigate, I suppose.

**[Testimony of John Ryan, Recalled—Redirect Examination.]**

**Redirect Examination.**

Q. Mr. Ryan, the People's ditch runs through section 5 to the land below?     A. Yes, sir.

Mr. WOOD.—The map will show that, your Honor. That is all.

**[Testimony of John Ryan, Recalled—Examination by the Court (Portions of).]**

(Examination by the COURT.)

Q. At what time were you irrigating?

A. Oh, I started—I don't know exactly—all spring. April.

Q. All the spring?     A. All spring.

Q. March and April?

A. There was no water in that time only just the slough water. I was working there, putting dams in the little sloughs.

Q. That was in April?

A. In the latter part of April, the middle of April. There wasn't much water. [364]

